(19)

No. 01-1420-CSX Title: Washington State Department of Social and Health Services, et al., Petitioners
v.
Guardianship Estate of Danny Keffeler, et al.

Docketed:
March 26, 2002 Court: Supreme Court of Washington

Entry	Date	Proceedings and Orders
	Jan 28 2002	Application (01A557) to recall and stay of the Supreme Court of Washington, submitted to Justice O'Connor.
	Jan 29 2002	Response to application (01A557) from Guardianship Estate of Danny Keffeler requested by Justice O'Connor, due February 5, 2002.
	Jan 29 2002	(01A557) Justice O'Connor signed an order recalling and staying the mandate issued by the Washington Supreme Court pending the receipt of a response
	Feb 5 2002	Response to application (01A557) filed by Guardianship Estate of Danny Keffeler.
	Feb 14 2002	(01A557) Reply to Respondent's Opposition filed
	Feb 15 2002	(01A557) The Solicitor General is invited to file a brief in this case expressing the views of the United States on or before 3 p.m., Friday, March 1, 2002.
	Mar 1 2002	Response to application (01A557) filed by The Solicitor General.
	Mar 6 2002	(01A557) Supplemental Brief of Respondents in Opposition to Application to Recall and Stay the Mandate of the Supreme Court of Washington
	Mar 13 2002	Application (01A557) referred to the Court by Justice O'Connor.
	Mar 13 2002	Application (01A557) granted by the Court.
	Mar 14 2002	Petition for writ of certiorari filed. (Response due April 25, 2002)
	Mar 14 2002	Appendix of petitioners filed.
	Apr 25 2002	Brief amici curiae of Children's Defense Fund, et al. filed.
	Apr 25 2002	Brief amici curiae of Florida, et al. filed.
	Apr 25 2002	Brief of respondents Guardianship Estate of Danny Keffeler, et al. in opposition filed.
	Apr 30 2002	LODGING consisting of twelve bound copies of lower court material submitted by counsel for the respondents.
	May 7 2002	DISTRIBUTED for Conference of May 23, 2002
	May 7 2002	Reply brief of petitioners Washington St.Dept.of Social and Health Services, et al. filed.
	May 28 2002	Petition GRANTED. SET FOR ARGUMENT December 3, 2002. **********
	Jun 13 2002	Order extending time to file the joint appendix and petitioners' brief on the merits to and including August 2, 2002.
	Aug 2 2002	Joint appendix filed.
	Aug 2 2002	Joint appendix in two volumes.
	Aug 2 2002	Brief of petitioners Washington State Dept. of Social and Health Services, et al. filed.
	Aug 2 2002	Brief amici curiae of Children's Defense Fund, et al. filed.
	Aug 2 2002	Brief amici curiae of California Counties of Los Angeles, et

2/pp

No. 01-1420-CSX

Entry	Date	Proceedings and Orders
		al. filed.
	Aug 2 2002	Brief amici curiae of Florida, et al. filed.
	Aug 2 2002	Brief amicus curiae of United States filed.
	Aug 16 2002	Order extending time to file respondents' brief on the merits to and including October 4, 2002.
	Aug 22 2002	Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument filed.
	Oct 3 2002	Brief amici curiae of Omar Azzam, et al. filed.
	Oct 4 2002	Brief of respondents Guardianship Estate of Danny Keffeler, et al. filed.
	Oct 4 2002	Brief amicus curiae of AARP filed.
	Oct 4 2002	Brief amici curiae of Juvenile Law Center, et al. filed.
	Oct 7 2002	Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument GRANTED.
	Oct 23 2002	CIRCULATED.
	Nov 13 2002	Reply brief of petitioners Washington State Dept of Social and Health Services, et al. filed.
	Dec 3 2002	ARGUED.

Supreme Court, U.S.
FILED
01 1420 MAR 14 2002
OFFICE OF THE CLERK

No. ____

IN THE SUPREME COURT OF THE UNITED STATES

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, ET AL.,

PETITIONERS,

v.

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, GUARDIAN, AND OTHER PERSONS SIMILARLY SITUATED,

RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

PETITION FOR A WRIT OF CERTIORARI

CHRISTINE O. GREGOIRE
Attorney General

William Berggren Collins
Sr. Assistant Attorney General
Counsel of Record

1125 Washington Street SE
Olympia, WA 98504-0100
360-753-6245

Walter Dellinger
Sri Srinivasan
O'Melveny & Myers
555 13th Street NW
Washington, D.C. 20004
202-383-5300

Counsel for Petitioners

3618

QUESTION PRESENTED

42 U.S.C. §§ 405(j) and 1383(a) authorize the Commissioner of Social Security to appoint a representative payee to receive benefits on behalf of a beneficiary, and social security regulations provide that the payee may use the benefits to pay for the beneficiary's current care. 42 U.S.C. § 407(a) provides that these benefits are not subject to "execution, levy, attachment, garnishment, or other legal process". This case presents the following question:

Does a representative payee violate 42 U.S.C. § 407(a) when the payee uses the benefits to pay for the beneficiary's current care?

LIST OF PARTIES

Petitioners:

The Washington State Department of Social and Health Services;

Lyle Quasim was the Secretary of the Department of Social and Health Services when this matter was originally filed. Dennis Braddock is Mr. Quasim's successor and the current Secretary of the Department of Social and Health Services;

Michael R. Hobbs, Program Manager for the Department of Social and Health Services.

Respondents:

Guardianship Estate of Danny Keffeler, by Wanda Pierce, Guardian, and other persons similarly situated.

TABLE OF CONTENTS

PETITION FOR A WRIT OF CERTIORARI 1

OPINIONS BELOW.....1

JURISDICTION 1

STATUTORY PROVISIONS INVOLVED 1

STATEMENT.....2

A. Statutory And Regulatory Background.....2

B. The Department's Responsibilities As Representative Payee For Foster Children.....6

C. Procedural History 11

REASONS FOR GRANTING THE PETITION.....15

A. There Is A Substantial Conflict Between *Keffeler* And Decisions Of Other Courts On The Same Issue 17

B. *Keffeler* Conflicts With Regulations Adopted By The Social Security Administration 22

C. This Case Presents An Important National Question 23

D. *Keffeler* Is Wrong As A Matter Of Law 24

CONCLUSION.....28

TABLE OF AUTHORITIES

Cases

Bennett v. Arkansas
485 U.S. 395 (1988) 14, 26

Brinkman v. Rahm
878 F.2d 263 (9th Cir. 1989) 14, 27

C.G.A. v. Alaska
824 P.2d 1364 (Alaska 1992) ..... *passim*

Califano v. Jobst
434 U.S. 47 (1977) 3

Chevron U.S.A., Inc. v. Natural Res. Def. Coun., Inc.
467 U.S. 837 (1984) 25

Crawford v. Gould
56 F.3d 1162 (9th Cir. 1995) 14, 27

Ecolono v. Div. of Reimbursements of the Dep't of Health & Mental Hygiene
769 A.2d 296 (Md. App. 2001) 20

Guardianship Estate of Keffeler v. Dep't of Soc. & Health Servs.
145 Wash. 2d 1, 32 P.3d 267 (2001) 1, 13

In re the Guardianship of Nelson
547 N.W.2d 105 (Minn. Ct. App. 1996) 20-21, 24

King v. Schafer
940 F.2d 1182 (8th Cir. 1991), *cert. denied sub nom. Crytes v. Schafer*, 502 U.S. 1095 (1992) ..... *passim*

Mason v. Sybinski
280 F.3d 788, 2002 WL 202456 (7th Cir. Feb. 11, 2002) 16-18

Mellies v. Mellies
815 P.2d 114 (Kan. 1991) 20-22, 24

Muller v. New York
179 Misc. 2d 980, 686 N.Y.S.2d 652 (N.Y. Ct. Cl. 1999), *aff'd*, 280 A.D.2d 923, 719 N.Y.S.2d 916 (N.Y. App. Div. 2001) 20

Philpott v. Essex County Welfare Bd.
409 U.S. 413 (1973) 14, 26

Statutes

28 U.S.C. § 1257(a) 1

Title XVI of the Social Security Act
(42 U.S.C. §§ 1381 *et seq.*)
(Oct. 30, 1972, Pub. L. No. 92-603, Title I, §§ 132(a) to (c), 136, Title III, § 305(a), 86 Stat. 1360, 1364, 1484) 2, 3, 25

42 U.S.C. § 1381a 3

42 U.S.C. § 1382-1382d 3

42 U.S.C. § 1383(a)(2)(A)(ii) 22

42 U.S.C. § 1383(a)(2)(A)(ii)(I) 2, 24, 25

42 U.S.C. § 1383(a)(2)(A)(iii) 5, 22, 25

42 U.S.C. § 1383(a)(2)(B)(i) 4

42 U.S.C. § 1383(a)(2)(B)(xi)-(xiii) 4

42 U.S.C. § 1383(a)(2)(C)(i) 22

42 U.S.C. § 1383(a)(2)(C)(ii) 4, 22

42 U.S.C. § 1383(a)(2)(C)(iv) 4

42 U.S.C. § 1383(d)(1) 6, 22, 25

Title II of the Social Security Act
(42 U.S.C. §§ 401 *et seq.*)
(August 14, 1935, ch. 531, Title II, § 201,
49 Stat. 622; Aug. 10, 1939, ch. 666,
Title II, § 201, 53 Stat. 1362. ..... 2, 25
42 U.S.C. § 402(d) 3
42 U.S.C. § 405(a) 22, 25
42 U.S.C. § 405(j)(1)(A) 4, 5, 22, 25
42 U.S.C. § 405(j)(2)(A) 4
42 U.S.C. § 405(j)(2)(E)(ii) 4
42 U.S.C. § 405(j)(3)(A) 22
42 U.S.C. § 405(j)(3)(B) 4, 22
42 U.S.C. § 405(j)(3)(D) 4
42 U.S.C. § 407(a) ..... *passim*
42 U.S.C. § 408(a)(5) 5
Wash. Rev. Code § 13.34.030(5) 6
Wash. Rev. Code § 13.34.130(1)(b) 6
Wash. Rev. Code § 13.34.130(2) 7
Wash. Rev. Code § 26.20.035 21
Wash. Rev. Code § 74.13.060 ..... 14, 27
Wash. Rev. Code § 74.13.060(2) 7, 28
Wash. Rev. Code § 74.13.060(5) 7, 13
Wash. Rev. Code § 74.20A.010 7
Wash. Rev. Code 13.34 6

Regulations

20 C.F.R. § 404.2010(b) 4
20 C.F.R. § 404.2021(b) 4
20 C.F.R. § 404.2035 ..... 5, 24
20 C.F.R. § 404.2040 ..... 21, 22
20 C.F.R. § 404.2040(a)(1) ..... *passim*
20 C.F.R. § 404.2040(b) 5
20 C.F.R. § 404.2040(d) 6, 28
20 C.F.R. § 404.2045 5
20 C.F.R. § 416.110 3
20 C.F.R. § 416.1205(c) 4
20 C.F.R. § 416.202 3
20 C.F.R. § 416.610(b) 4
20 C.F.R. § 416.621(b) 4
20 C.F.R. § 416.635(a) 5, 24
20 C.F.R. § 416.640(a) ..... *passim*
20 C.F.R. § 416.640(b) 5
20 C.F.R. § 416.640(d) 6, 28
20 C.F.R. § 416.645 5
Wash. Admin. Code § 388-25-0210 7
Wash. Admin. Code § 388-70-069 ..... 7, 14
Wash. Admin. Code § 388-70-069(1) 7
Wash. Admin. Code § 388-70-069(2) 8

PETITION FOR A WRIT OF CERTIORARI

The Attorney General of Washington, on behalf of the Washington State Department of Social and Health Services and the other petitioners, respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Washington in this case.

OPINIONS BELOW

The opinion of the Washington Supreme Court is reported at 145 Wash. 2d 1, 32 P.3d 267. App. at 1.[1] The Okanogan County Superior Court's Memorandum Opinion, App. at 22, Plaintiff's Order Granting Plaintiff's Motion For Summary Judgment, App. at 112, and Court's Findings Of Fact On Order Of Remand From The Supreme Court, App. at 46, are unpublished.

JURISDICTION

The judgment of the Washington Supreme Court was entered October 11, 2001. App. at 1. A timely motion for reconsideration was denied December 14, 2001. App. at 40. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 407(a), provides: "The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law." App. at 170.

---

[1] "App." refers to the separately bound Appendix To The Petition For A Writ Of Certiorari.

The other relevant provisions of Title II of the Social Security Act, 42 U.S.C. §§ 401 *et seq.*, App. at 145; Title XVI of the Social Security Act, 42 U.S.C. §§ 1381 *et seq.*, App. at 177; social security regulations, App. at 205; and Washington state statutes, App. at 245, and regulations, App. at 256, are set forth in the appendix.

STATEMENT

Under Washington law, children who have been abandoned, neglected, or abused are placed in the care and custody of the Washington Department of Social and Health Services (the Department). A number of those children are or become eligible for payments from the Social Security Administration (SSA), either because they are dependents of a deceased or disabled parent or because they, themselves, are indigent and disabled. Unless there is a relative or guardian qualified to act on behalf of the child, the Commissioner of Social Security (the Commissioner) appoints the Department representative payee to receive benefits on behalf of eligible foster children in the Department's care. Complying with social security regulations, the Department uses the benefits to pay for the beneficiary's current care and special needs.

This case raises the question whether another provision of the Social Security Act, 42 U.S.C. § 407(a), prohibits representative payees from using benefits to pay for a beneficiary's current care. This is a very important question. It involves every public agency serving as representative payee. Moreover, the principles upon which it will be decided apply equally when a parent or other person with custody of a child is appointed payee.

A. Statutory And Regulatory Background

1. This case involves two different categories of benefits under the Social Security Act. The first is authorized by Title II of the Act. 42 U.S.C. §§ 401

et seq. As originally enacted in 1935, Title II provided a monthly retirement benefit for wage earners reaching the age of 65. August 14, 1935, ch. 531, Title II, § 201, 49 Stat. 622. In 1939, the law was expanded to provide secondary benefits for wives, children, widows, and parents of wage earners. Aug. 10, 1939, ch. 666, Title II, § 201, 53 Stat. 1362.

The purpose of the added benefit was "to provide persons dependent on the wage earner with protection against the economic hardship occasioned by loss of the wage earner's support". *Califano v. Jobst*, 434 U.S. 47, 50 (1977). In other words, the benefit was designed to replace the support provided by the wage earner. Under Title II, a child is eligible for social security benefits if the child is under the age of 18, unmarried, and was dependent on a wage earner entitled to Title II benefits. 42 U.S.C. § 402(d), App. at 145.

The second type of benefit is Supplemental Security Income (SSI) authorized by Title XVI of the Social Security Act, 42 U.S.C. §§ 1381 *et seq.* SSI benefits are available to aged, blind, or disabled individuals who meet certain income and resource requirements. 42 U.S.C. § 1381a, App. at 177.

The SSI program was created in 1972. Oct. 30, 1972, Pub. L. No. 92-603, Title I, §§ 132(a) to (c), 136, Title III, § 305(a), 86 Stat. 1360, 1364, 1484. It replaced "the financial assistance programs for the aged, blind, and disabled in the 50 States and the District of Columbia for which grants were made under the Social Security Act". 20 C.F.R. § 416.110, App. at 228. The purpose was "to assure a minimum level of income for people who are age 65 or over, or who are blind or disabled and who do not have sufficient income and resources to maintain a standard of living at the established Federal minimum income level". 20 C.F.R. § 416.110, App. at 228. Thus, SSI is a type of public assistance program.

To qualify for SSI benefits a child must establish a disability and meet income and resource limits. 42 U.S.C. § 1382-1382d; 20 C.F.R. § 416.202, App. at 231. So,

unlike social security benefits under Title II, there is a limit on the resources an SSI beneficiary may accrue and still maintain eligibility. Since 1989, this amount has been $2,000. 20 C.F.R. § 416.1205(c), App. at 244.

2. The Social Security Act authorizes the Commissioner to appoint a representative payee to receive social security and SSI benefits where it would serve the interest of the beneficiary. 42 U.S.C. §§ 405(j)(1)(A), App. at 157; 1383(a)(2)(A)(ii)(I), App. at 178. In general, if a beneficiary is under the age of 18, the Commissioner will appoint a representative payee. 20 C.F.R. §§ 404.2010(b), App. at 207; 416.610(b), App. at 233. For such underage beneficiaries, the Commissioner prefers to appoint a parent, stepparent, relative, or close friend. If none of those is suitable under the circumstances, the last preference is an authorized social service agency, such as the Department. 20 C.F.R. §§ 404.2021(b), App. at 209; 416.621(b), App. at 234.

Before a representative payee is appointed, the Commissioner is required to conduct an investigation of the payee. 42 U.S.C. §§ 405(j)(2)(A), App. at 158; 1383(a)(2)(B)(i), App. at 179. The Commissioner must also notify the beneficiary's legal guardian or legal representative of the payee's appointment, and the appointment may be appealed. 42 U.S.C. §§ 405(j)(2)(E)(ii), App. at 164; 1383(a)(2)(B)(xi)-(xiii), App. at 182-85.

The Commissioner is also required to establish a system of accountability to make sure that the benefits are properly used, and if the payee is a state institution, the Commissioner "shall establish a system of accountability monitoring for institutions in each State". 42 U.S.C. §§ 405(j)(3)(B), App. at 165; 1383(a)(2)(C)(ii), App. at 185. In addition to this monitoring, the Commissioner can require a report from a payee at any time if the Commissioner believes that benefits are being misused. 42 U.S.C. §§ 405(j)(3)(D), App. at 165; 1383(a)(2)(C)(iv), App. at 186. If the Commissioner finds that a representative payee has

misused benefits, the law requires the Commissioner to "promptly revoke certification for payment of benefits to such representative payee . . . and certify payment to an alternative representative payee". 42 U.S.C. §§ 405(j)(1)(A), App. at 159; 1383(a)(2)(A)(iii), App. at 179. Knowingly misusing benefits is also a felony. 42 U.S.C. § 408(a)(5), App. at 172.

3. Once appointed, the representative payee is responsible for using the benefits "only for the use and benefit of the beneficiary in a manner and for the purposes he or she determines, under the guidelines in this subpart, to be in the best interests of the beneficiary". 20 C.F.R. §§ 404.2035, App. at 213; 416.635(a), App. at 236. Under the Commissioner's regulations, the benefits are deemed to have been used "for the use and benefit of the beneficiary if they are used for the beneficiary's current maintenance". 20 C.F.R. §§ 404.2040(a)(1), App. at 214; 416.640(a), App. at 234. The regulations provide that current maintenance includes "cost incurred in obtaining food, shelter, clothing, medical care, and personal comfort items". 20 C.F.R. §§ 404.2040(a)(1), App. at 214; 416.640(a), App. at 234. Benefits may also be used for institutional care. 20 C.F.R. §§ 404.2040(b), App. at 214; 416.640(b), App. at 237.

After a payee has used the benefits for current maintenance and the other purposes authorized under the regulations, any remaining amount must be conserved or invested, preferably in interest-bearing accounts. 20 C.F.R. §§ 404.2045, App. at 223; 416.645, App. at 242.

4. The Social Security Act also contains an anti-attachment provision that limits the ability of creditors and other third-parties to attach or encumber social security and SSI benefits. According to that provision:

> "The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and

> none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law." 42 U.S.C. § 407(a), App. at 170.

See also 42 U.S.C. § 1383(d)(1), App. at 200 (applying § 407(a) to SSI benefits).

Section 407(a) is primarily aimed at ensuring that the benefits are used for the beneficiary's current care and are not diverted by creditors, through compulsory process, to pay past debts. Social Security regulations provide that a "payee may not be *required* to use benefit payments to satisfy a debt of the beneficiary, if the debt arose prior to the first month for which payments are certified to a payee". 20 C.F.R. §§ 404.2040(d), App. at 216; 416.640(d), App. at 239 (emphasis added). However, it is *permissible* for the payee to satisfy such a debt "if the current and reasonably foreseeable needs of the beneficiary are met". 20 C.F.R. §§ 404.2040(d), App. at 216; 416.640(d), App. at 239.

B. The Department's Responsibilities As Representative Payee For Foster Children

1. The Department is responsible for protecting children. Washington has a carefully crafted system—including judicial oversight—for removing a dependent child from his or her home and placing the child in foster care. Wash. Rev. Code 13.34. A "dependent child" is one who has been abandoned, is abused or neglected, or has no parent, guardian, or other custodian capable of adequately caring for the child. Wash. Rev. Code § 13.34.030(5), App. at 246.

Once a court finds that a child is dependent it may order "the child to be removed from his or her home and into the *custody, control, and care of a relative or the department* or a licensed child placing agency for placement in a foster family home or group care facility". Wash. Rev. Code § 13.34.130(1)(b), App. at 250 (emphasis added). When a

child is removed from the home, "[p]lacement of the child with a relative . . . shall be given preference by the court." Wash. Rev. Code § 13.34.130(2), App. at 251. Thus, children in the Department's custody are placed in foster care when there is no other suitable relative willing to care for them. In September 1999, there were 10,578 foster children in the Department's care. App. at 49, ¶ 3.

2. Although the Department pays the cost of foster care, it is not primarily an obligation of the state. Foster care is a form of public assistance, and the Washington Legislature has declared that it is the "public policy [of Washington] that children shall be maintained from the resources of responsible parents, thereby relieving, at least in part, the burden presently borne by the general citizenry through welfare programs". Wash. Rev. Code § 74.20A.010, App. at 255.

In addition to requiring parents to pay for the care of their children, the Department is authorized to use social security and SSI benefits to pay for a child's current care. If no guardian for a child's estate has been appointed, the Secretary of the Department (the Secretary) is authorized to act as representative payee for children in foster care, and he "may apply such funds against the amount of public assistance otherwise payable to such [foster child]". Wash. Rev. Code § 74.13.060(2), (5), App. at 253, 254. Under a regulation adopted by the Secretary, if "a child in foster care is entitled to financial benefits the income received shall be used on behalf of the child to help pay for the cost of foster care received". Wash. Admin. Code § 388-70-069(1) (2001), App. at 257.[2] Income includes "SSI, [Retirement Survivors and Disability Insurance], veteran's benefits, railroad retirement benefits, inheritances, or any other payments for

---

[2] Wash. Admin. Code § 388-70-069 was repealed in April 2001, but was replaced with a functionally similar provision, Wash. Admin. Code § 388-25-0210. App. at 257, 256, respectively.

which the child is eligible, unless specifically exempted by the terms and conditions of the receipt of the income". Former Wash. Admin. Code § 388-70-069(2), App. at 256.

Of the 10,578 children in foster care in September 1999, approximately 1,480 children were receiving benefits—469 received social security benefits under Title II and 923 received SSI benefits under Title XVI. About 88 children received both. App. at 49, ¶¶ 6-7.

3. When a child in foster care becomes eligible for social security or SSI benefits, and the Department is appointed representative payee, the payee functions are performed by two different units within the Department—the Children's Administration and the Trust Fund Unit. Children's Administration social workers are responsible for providing foster care services to all foster children regardless of whether they receive social security or SSI benefits. This includes preparing an Individual Service and Safety Plan, which addresses the child's needs and where the child should live. App. at 51, ¶ 15; 63-64, ¶ 60.

When a child is in foster care, the foster parent pays for the child's food, clothing, shelter, and other needs. The Department then pays the foster parent based on a rate schedule. App. at 55, ¶ 25. In addition to basic foster care, the schedule includes 25 other categories that cover a wide variety of special foster care services, including transportation costs for the child; care for children with behavioral or emotional problems or who are disabled; medical care; funding for activities related to skill building or the development of an enhanced self-image such as music lessons or participation in recreational activities; and additional clothing.[3] All of these payments are for direct

[3] State's Ex. No. 1, Supplemental, Defendant's Response To Plaintiff's Order To Produce 9, Social Service Payment System Manual, App. C, Service Codes 3201, 3206, 3210, 3212, 3213, 3217, 3225.

services to the child and do not include the Department's administrative expenses.

Children's Administration staff apply to SSA for social security and SSI benefits on behalf of foster children. The reason the Department applies for benefits and serves as representative payee is that there is rarely anyone else to do it. If the staff believes that a denial of benefits is erroneous, they will appeal on behalf of the child. App. at 63, ¶ 59. The staff also does the work required to maintain eligibility for social security and SSI benefits. The process to maintain SSI benefits is complex and involves redetermination of a child's disability and financial status. App. 64-66, ¶ 63-67. The Children's Administration maintains a staff of 27 just for the purpose of applying for and maintaining SSI eligibility.

4. The Trust Fund Unit is responsible for accounting for benefits received by the foster children in the Department's care. App. at 51, ¶ 14. When benefits are received they are deposited in a special Foster Care Trust Fund Account in the State Treasurer's Office.[4] The Unit maintains an individual subsidiary account for each child. App. at 51-52, ¶¶ 16-17. The Trust Fund Unit is responsible for ensuring that each child receives the correct benefits and works with SSA to resolve discrepancies regarding benefits due or over-payments. The Unit is also responsible for

[4] The only exception occurs when the Department receives a retroactive lump sum payment of SSI benefits that exceeds six times the monthly benefit amount. In this case, SSA deposits the lump sum payment directly into a dedicated interest-bearing account in a local bank. These funds cannot be used to pay for basic foster care services and can only be expended for special needs, primarily related to the impairment that gave rise to SSI eligibility. App. at 52, ¶ 18. If the retroactive payment involves a social security payment or an SSI payment of less then six times the monthly SSI benefit, it may be used to pay for the cost of care for the months for which the benefit was granted. For example, a retroactive payment in May for the months of February, March, and April, may be used to pay for care for the months of February, March, and April.

complying with SSA's strict reporting and accounting requirements. App. at 67, ¶¶ 71-73.

5. The Trust Fund Unit uses the child's benefits to pay for the child's foster care. For example, during the month of February, the Department pays foster parents and other providers for the child's January foster care expenses. App. at 56, ¶ 27. In the next month, March, the Trust Fund Unit reviews the Department's foster care payment records for each of the beneficiaries to determine the amount of benefits to be used for the child's foster care. If the January benefit is less than or equal to the cost of care for January, it is used for this purpose, and the Trust Fund Unit transfers the funds to the Department. App. at 56, ¶¶ 28-29. If the January benefit is greater than the cost of care in January, the excess amount is deposited in a local bank for the benefit of the child. Funds in the account are available for special needs, and the interest earned on the account is credited to the child's trust fund account. App. at 62, ¶ 55.

Social workers can request that a child's benefits be used to pay for special items beyond the basic foster care and special needs categories paid for by the Department. These items include computers, educational expenses, toys, clothing, athletic equipment, and orthodontics. Social workers can also request that a child's benefits be conserved for a period prior to emancipation. App. at 57, ¶ 34; 58, ¶ 34; 64, ¶ 62. The Trust Fund Unit can grant these requests instead of paying for foster care, if the item is of direct benefit to the child. App. at 56-57, ¶¶ 30-33.

6. A child's social security and SSI benefits seldom pay for the entire amount of a child's foster care. For example, in this case, Nacole Blimka received $7,912 in benefits and the Department paid $28,769 for her foster care.[5] Sara Nelson received $751 in benefits and the

[5] State's Ex. No. 1 Supplemental, Defendant's Response To Plaintiff's Order To Produce 1, Blimka, Nacole, at 1, 3.

Department paid $25,445 for her foster care.[6] Denita Smith received $3,529 and the Department paid $14,933.[7]

C. Procedural History

1. In 1989, Danny Keffeler was voluntarily placed in foster care with the Department by his mother, who soon thereafter died in an automobile crash. The Okanogan County Superior Court appointed Danny's Grandmother, respondent Wanda Pierce, guardian of his estate. Although Mrs. Pierce was appointed his guardian, the court found that Danny was dependent and left him in foster care in the custody of the Department.

Mrs. Pierce was appointed representative payee to receive Danny's social security benefits. Subsequently, the Commissioner removed Mrs. Pierce and appointed the Department payee. The Department served in this capacity for about two years. During this time, the Department applied the benefits to Danny's cost of care. Mrs. Pierce objected to her removal as Danny's payee, and she was ultimately reinstated.

2. In 1996, Mrs. Pierce brought an action against the Department on behalf of the Estate of Danny Keffeler to recover the social security benefits the Department used to pay for Danny's care during the time when the Department was his representative payee. The action was also brought on behalf of a class of foster children in the Department's care who receive social security benefits. The complaint alleged that the Department's use of social security benefits to pay for the cost of care violated the Social Security Act's anti-attachment provision, 42 U.S.C. § 407(a).

[6] State's Ex. No. 1 Supplemental, Defendant's Response To Plaintiff's Order To Produce 1, Nelson, Sarah, at 1, 5.

[7] State's Ex. No. 1 Supplemental, Defendant's Response To Plaintiff's Order To Produce 1, Smith, Denita. at 1, 4.

In 1997, the Okanogan County Superior Court certified the class to include all past, present, and future foster children in Washington who receive Title II social security payments for whom the Department acts or has sought to act as representative payee. App. at 138. The court also denied the Department's motion to dismiss the complaint for failure to join the SSA as an indispensable party. App. at 139. Subsequently, the trial court also entered an order amending the class definition to include foster children receiving SSI benefits under Title XVI. App. at 134.

The parties moved for summary judgment, and in 1998, the trial court issued a Memorandum Opinion ruling in favor of the plaintiffs. App. at 122. The trial court concluded that the Department's use of social security or SSI benefits to pay for current care violated 42 U.S.C. § 407(a). The court enjoined the Department from using social security and SSI benefits to pay for the cost of a foster child's care and "from in any way administering the funds to offset the State's cost of maintaining a child in foster care". App. at 117, ¶ 2.3. The order required the Department to provide an accounting of social security and SSI benefits received and spent on class members since April 18, 1975. App. at 117, ¶ 3.1. Based on this accounting, plaintiffs were authorized to file a claim to be paid into a common fund to be administered by a guardian approved by the court. App. at 118, ¶¶ 4.1-4.2.[8]

3. The Department appealed the trial court's judgment to the Washington Court of Appeals, which certified the case to the Washington Supreme Court.[9] Subsequently, the United States Department of Justice filed an amicus curiae brief in support of the Department on behalf of the Commissioner and participated in oral argument before the Washington Supreme Court. After argument, the court issued an Order remanding the case to the trial court for additional fact finding. App. at 43. At the conclusion of the fact finding, the trial court entered the Court's Findings Of Fact On Order Of Remand From Supreme Court. App. at 46. The parties and the Department of Justice filed supplemental briefs. The Washington Supreme Court held a second oral argument. The Department of Justice also participated in this argument in support of the Department. On October 11, 2001, the Washington Supreme Court entered its judgment in *Guardianship Estate of Keffeler v. Department of Social & Health Services*, 145 Wash. 2d 1, 32 P.3d 267 (2001). App. at 1.

a. The five-justice majority opinion affirmed the trial court. The majority began its analysis by asserting its belief that a foster child is better off with a private representative payee than with the Department. According to the court, if the Department is appointed payee, it will use the benefits to pay for current care, but if there is a private payee, 42 U.S.C. § 407(a) prohibits the Department from requiring that the benefits be used to pay for current care.

According to the majority opinion, the "critical question" in the case was whether the Department "acts as a *creditor*" within the meaning of the anti-attachment provision "when it reimburses itself for foster care costs out of the foster childrens benefits". App. at 19. The majority next

[8] The trial court also awarded the Estate of Danny Keffeler $4,998, which was the amount of the benefits the Department used to pay for Danny's care while the Department was his payee. App. at 120, ¶ 6.1.

[9] The Department did not appeal the judgment in favor of the Estate of Danny Keffeler. This judgment required the Department to repay benefits it received as Danny's representative payee, which were used to pay for the cost of his care. App. at 120, ¶¶ 6.1-6.3. As a matter of state law the Department was not authorized to be Danny's payee because his grandmother, Wanda Pierce, had been appointed guardian of his estate. Wash. Rev. Code § 74.13.060(5), App. at 254, provides that the "appointment of a guardian for the estate of such person shall terminate the secretary's authority as custodian of said funds".

discussed *Philpott v. Essex County Welfare Board*, 409 U.S. 413 (1973), *Bennett v. Arkansas*, 485 U.S. 395 (1988), *Brinkman v. Rahm*, 878 F.2d 263 (9th Cir. 1989), and *Crawford v. Gould*, 56 F.3d 1162 (9th Cir. 1995). App. at 20-23. These cases all hold that the state's attempts to use social security benefits to pay for a beneficiary's care violated 42 U.S.C. § 407(a). While none of these decisions involved a state agency that had been appointed representative payee, the majority concluded that the "cases evince an expansive interpretation of the protections of § 407", and that "the thrust of the case law is that Social Security benefits are, for all intents and purposes, beyond the reach of the state". App. at 23.

The majority distinguished *King v. Schafer*, 940 F.2d 1182 (8th Cir. 1991), *cert. denied sub nom. Crytes v. Schafer*, 502 U.S. 1095 (1992), and *C.G.A. v. Alaska*, 824 P.2d 1364 (Alaska 1992). Although both cases involved state agencies that were appointed representative payee, the majority concluded that the two decisions only hold that a state agency may be appointed representative payee and did not address the question of whether benefits may be used to pay for the beneficiaries' current care. App. at 23-25.

Based on its analysis of those decisions, the majority held that "reimbursement is barred by § 407(a) because despite [the Department's] status as representative payee it performs the role of creditor when it takes the foster child's [benefits] to reimburse itself for moneys spent on the child". App. at 25. The court also focused on the word "reimbursement", stating that "the bare logic of reimbursement also implies a creditor-debtor relationship". App. at 26. And the court pointed to Wash. Rev. Code § 74.13.060 and Wash. Admin. Code § 388-70-069, which set out the state policy that a child's assets should be used to pay for the child's care. App. at 253, 257, respectively. The court remanded the case for the calculation of attorneys fees

and the calculation of the judgment to be paid to class members. App. at 31.

b. Three Justices joined an opinion concurring in part and dissenting in part. These Justices agreed with the majority that the Department had used benefits to pay for "*past due* foster care payments", and they concluded that this practice was not permitted. App. at 32. However, they dissented from the majority's holding that § 407(a) prohibited the Department from using the benefits to pay for current care. App. at 32. The concurring/dissenting opinion rejected the majority's reliance on *Philpott*, *Bennett*, *Brinkman*, and *Crawford* because they did not involve "the expenditure of social security benefits by a state that was designated as a representative payee". App. at 36.

4. On October 31, 2001, the Department filed a timely motion for reconsideration. This motion was denied on December 14, 2001, and the mandate issued the same day. App. at 40, 41. On January 22, 2002, the Department requested a stay of the injunction from the Washington Supreme Court. The motion was denied the same day. App. at 143. On January 28, 2002, the Department filed an Application for a stay with the Honorable Sandra Day O'Connor as the Circuit Justice for the Ninth Circuit. On January 29, 2002, Justice O'Connor issued a temporary stay pending receipt of a response and further order of Justice O'Connor or the Court. App. at 142. On February 15, 2002, the Court issued an order inviting the Solicitor General to file a brief expressing the views of the United States. App. at 141. On March 1, 2002, the Solicitor General filed an amicus brief concluding that the stay should issue pending certiorari. This Court granted the stay on March 13, 2002.

REASONS FOR GRANTING THE PETITION

The Court should grant the petition for four reasons. First, the Washington Supreme Court's decision in *Keffeler* directly conflicts with the decisions of the Seventh Circuit,

the Eighth Circuit, and the Alaska Supreme Court. *Keffeler* holds that 42 U.S.C. § 407(a) prohibits a representative payee from using social security and SSI benefits to pay for a beneficiary's current care. These other courts all hold, by contrast, that § 407(a) does not prevent a payee from using benefits for current care. *Mason v. Sybinski*, 280 F.3d 788, 2002 WL 202456 (7th Cir. Feb. 11, 2002); *King v. Schafer*, 940 F.2d 1182 (8th Cir. 1991), *cert. denied sub nom. Crytes v. Schafer*, 502 U.S. 1095 (1992); *C.G.A. v. Alaska*, 824 P.2d 1364 (Alaska 1992).

Second, *Keffeler* conflicts with regulations adopted by the SSA and the Commissioner's interpretation of those regulations. SSA regulations explicitly provide that a representative payee may use the benefits to pay "for the beneficiary's current maintenance". 20 C.F.R. §§ 404.2040(a)(1), App. at 214; 416.640(a), App. at 237. The Commissioner has consistently taken the position in this case that the Department's use of benefits to pay current maintenance does not violate § 407(a). The Solicitor General has reiterated that position in the amicus curiae brief filed in response to the Court's invitation.

Third, this case raises an important question of nation-wide significance. The social security and SSI programs apply throughout the United States, as do the SSA's regulations. The application of § 407(a) to a representative payee's use of benefits is a critical issue to all public agencies, such as the Department, that are appointed representative payee for beneficiaries in their care. In nearly every state, public welfare agencies use social security and SSI benefits to pay the cost of care when acting as representative payee on a beneficiary's behalf. The question in this case is also critical to parents who serve as representative payee for their children—for the logic of the *Keffeler* decision also applies to them.

Finally, *Keffeler* is wrong as a matter of law. The plain meaning of § 407(a) does not apply to a representative

payee, and reading the statutes together compels this conclusion. 42 U.S.C. §§ 405(j) and 1383(a) authorize the appointment of representative payees, who are permitted to use the benefits under the supervision of the Commissioner. Section 407(a) is directed at creditors and others who seek to obtain the benefits through "execution, levy, attachment, garnishment, or other legal process". *Keffeler's* reliance on *Philpott*, *Bennett*, *Brinkman*, and *Crawford* is misplaced because those cases did not involve representative payees. Simply put, the use of benefits by a payee—in accordance with SSA regulations—does not violate § 407(a).

A. There Is A Substantial Conflict Between *Keffeler* And Decisions Of Other Courts On The Same Issue

The Department was appointed representative payee for foster children in its care, pursuant to 42 U.S.C. §§ 405(j) and 1383(a), and has used the benefits for the beneficiary's current maintenance as authorized in 20 C.F.R. §§ 404.2040(a)(1) and 416.640(a). Despite this fact, a majority of the court in *Keffeler* held that the Department's use of the benefits constituted "other legal process" in violation of 42 U.S.C. § 407(a). According to the majority, the Department's "reimbursement is barred by § 407(a) because despite [the Department's] status as representative payee it performs the role of creditor when it takes the foster child's SSA entitlement to reimburse itself for moneys spent on the child". App. at 25. According to the court, a representative payee obligated to provide care for the beneficiary is barred from using social security benefits to pay the cost of care.

1. *Keffeler* squarely conflicts with *Mason*, *King*, and *C.G.A.* Like *Keffeler*, all three decisions involve the application of § 407(a) to a representative payee, all involve a representative payee's use of the benefits to pay for the beneficiary's current care, and all involve a state entity

responsible for paying for the beneficiary's current care—so use of the benefits for that purpose offsets a cost to the state.

a. ***Mason.*** In *Mason*, the plaintiff class sought an injunction to prevent the state hospital, "appointed by the [SSA] as representative payees, from deducting a portion of the recipients' Social Security benefits to pay for institutional maintenance without their voluntary consent". *Mason*, 2002 WL 202456 at *2. Under state law, "residents of hospitals and institutions are liable for the cost of their treatment and care. If a person is legally admitted to a state institution, however, she is entitled to care and maintenance there, regardless of her ability to pay." *Id.* at *3 (citations omitted). Thus, as in *Keffeler*, if benefits were not used to pay for care, the state would pay.

The *Mason* plaintiffs argued that use of their benefits to pay for care violated § 407(a), because "application of recipients' benefits to their cost of care without their specified consent is a form of 'other legal process'". *Mason*, 2002 WL 202456 at *3. The Seventh Circuit rejected this claim holding that a "properly appointed representative payee's responsible management of a Social Security recipient's benefits cannot amount to 'other legal process,' regardless of whether that payee is an arm of the state". *Id.* at *4. This holding is directly contrary to the holding of the Washington Supreme Court in *Keffeler*.

b. ***King.*** *King* involved plaintiffs who were "involuntarily committed to the care and custody of the Director of Mental Health". *King*, 940 F.2d at 1183. Under state law the plaintiffs and their representative payees were "jointly and severally liable for the costs of the plaintiffs' care and treatment". *King*, 940 F.2d at 1184. But, if the plaintiffs had no assets, the state would, of course, have to pay for their care, since they were involuntarily committed.

"[T]he state institutions acting as the representative payees for five of the plaintiffs apply the funds they receive on plaintiffs' behalf to monthly charges billed by the

Department for care and treatment". *Id.* The plaintiffs brought the action "to enjoin the Department's practice of using their social security benefits to pay for their care and treatment", asserting that the practice violated § 407(a). *King*, 940 F.3d at 1183.

The Eighth Circuit rejected this argument, holding that "the Department did not impermissibly use 'other legal process' to reach the plaintiffs' funds. Section 407(a) was not intended to outlaw a procedure expressly authorized by the Social Security Administration's own regulations." *Id.* at 1185. According to the court: "We cannot believe Congress contemplated this result in enacting § 407(a), particularly when this result would be contrary to another provision of the Social Security Act: § 405(j), providing for the appointment of representative payees." *Id.*[10]

c. ***C.G.A.*** In *C.G.A.*, the Alaska Department of Health and Social Services was appointed representative payee of a minor who was adjudicated a delinquent and placed at a youth center. Since the minor was placed at a youth center, the state was responsible for his care. The minor challenged the appointment of the state agency as representative payee, claiming that it violated § 407(a).

The Alaska Supreme Court ruled that there was no violation of § 407(a), holding: "[S]o long as the state agency performs its duties as representative payee and spends the funds only on authorized expenses, it would not violate the prohibition on attachment found in section 407(a)'s ban on

---

[10] The majority in *Keffeler* attempts to distinguish *King*, claiming that the *King* plaintiffs only "challenged the state's procedure for applying to become representative payee". App. at 24. This claim is not accurate. As we have explained, the plaintiff's claim in *King* was that the state—as representative payee—was barred from using their social security benefits to pay for their care. This is precisely what respondents allege here.

attachment." *C.G.A.*, 824 P.2d at 1369.[11] Of course, under social security regulations, a representative payee is specifically authorized to use the benefits for current maintenance, including the "cost incurred in obtaining food, shelter, clothing, medical care, and personal comfort items". 20 C.F.R. § 404.2040(a)(1), App. at 214.[12]

2. The decision below is in substantial tension with two other state court decisions, *Mellies v. Mellies*, 815 P.2d 114 (Kan. 1991), and *In re the Guardianship of Nelson*, 547 N.W.2d 105 (Minn. Ct. App. 1996). *Keffeler's* conclusion that the Department's use of the benefits violates § 407(a) is premised on the fact that the Department will

[11] *Keffeler* also attempts to distinguish *C.G.A.* by arguing that the decision "stands for no more than the uncontested proposition [that the Department] may apply to become a representative payee". App. at 25. But this is not accurate. The Alaska Supreme Court explicitly held that § 407(a) did not bar a representative payee from using the benefits for authorized expenses.

[12] *Keffeler* also conflicts with *Ecolono v. Division of Reimbursements of the Department of Health & Mental Hygiene*, 769 A.2d 296 (Md. App. 2001). In *Ecolono*, the Maryland Court of Appeals rejected the plaintiff's challenge that the state mental hospital that had been appointed his representative payee violated § 407(a) when it used his social security benefits to pay for his current care. The court held that "the voluntary application of benefits by a representative payee to the cost of current maintenance is not a violation of § 407(a)". *Ecolono*, 769 A.2d at 312. Based on federal statutes and social security regulations, the court concluded that "the application of social security benefits to current maintenance is regarded by the SSA as being in the best interest of the beneficiary". *Id.* at 305.

We have found only one reported decision involving a representative payee that is consistent with *Keffeler*. *Muller v. New York*, 179 Misc. 2d 980, 686 N.Y.S.2d 652 (N.Y. Ct. Cl. 1999), *aff'd*, 280 A.D.2d 923, 719 N.Y.S.2d 916 (N.Y. App. Div. 2001). *Muller* mainly "focuses on . . . compliance with State law". *Muller*, 686 N.Y.S.2d at 655. But the court also stated that there was a violation of § 407(a). *Id.* at 657. Though *Muller* is consistent with *Keffeler*, it too conflicts with the other decisions we have discussed.

provide foster care even if it does not receive social security benefits. But this is also true of parents who serve as representative payee for their children. Parents have a legal obligation to support their children, even if there are no social security or SSI benefits. *See, e.g.*, Wash. Rev. Code §§ 26.20.030-.035. Thus, to paraphrase *Keffeler*: "[I]f [a parent] is appointed representative payee for a . . . child [the parent] will confiscate the child's SSI money to benefit the [parent]. However, if anyone else is appointed, the [parent] will bear the cost of . . . care". App. at 18. Therefore, under *Keffeler's* reasoning, a representative payee parent may not use the benefits to pay for current maintenance. But both the Kansas Supreme Court and the Minnesota Court of Appeals have rejected this position.

In *Mellies*, a father was appointed representative payee for his son. The father was able to support the son without using the social security benefits. The son brought an action claiming that the benefits could not be used for current maintenance. Since the father was able to support him, the son argued that the father had a fiduciary duty to hold the benefits and invest them. This is the same rationale adopted in *Keffeler*. The Kansas Supreme Court rejected the son's claim because it was inconsistent with 20 C.F.R. § 404.2040, App. at 214, which authorizes a representative payee to use the benefit to pay for current maintenance. According to the court: "The Social Security Administration's interpretation of its own regulations is entitled to great weight and, probably, controlling weight." *Mellies*, 815 P.2d at 117.

Nelson reached the same conclusion. *Nelson* also involved a father who had been appointed his son's representative payee. State law required parents to personally provide for the support of their children, and the trial court held that the father could only use social security benefits for special needs—not current maintenance. The Minnesota Court of Appeals rejected this conclusion. According to the court, the

son's claim that benefits could not be used for current maintenance "directly conflicts with federal law". *Nelson*, 547 N.W.2d at 108. The court went on to say that if the benefits were not used for current maintenance it would also prevent "accomplishment of Congress's goal in establishing social security disability and survivor benefits: to replace income that would otherwise be available from a disabled or deceased parent for the beneficiary's current maintenance". *Id.*

Mellies and *Nelson* both recognize that 20 C.F.R. § 404.2040 authorizes a representative payee to use benefits to pay for the current cost of care—even if the payee is obligated and able to provide the care. *Mellies* and *Nelson* cannot be reconciled with the court's reasoning in *Keffeler*, which prohibits using benefits to pay for current care.

B. *Keffeler* Conflicts With Regulations Adopted By The Social Security Administration

Keffeler also conflicts with regulations adopted by the SSA and the Commissioner's interpretation of those regulations. When Congress enacted Title II and Title XVI, it granted the Commissioner "full power and authority to make rules and regulations". 42 U.S.C. §§ 405(a), App. at 156; 1383(d)(1), App. at 200. Title II and Title XVI require that a representative payee make proper use of the benefits. A representative payee may be appointed when the Commissioner "determines that the interest of any individual . . . would be served thereby". 42 U.S.C. §§ 405(j)(1)(A), App. at 157; 1383(a)(2)(A)(ii), App. at 178. The Commissioner is required to revoke certification of payment if the "representative payee has misused any individual's benefit". 42 U.S.C. §§ 405(j)(1)(A), App. at 157; 1383(a)(2)(A)(iii), App. at 179. In addition, Congress required the Commissioner to establish a system of accountability monitoring to make sure that the benefits are properly used. 42 U.S.C. §§ 405(j)(3)(A), (B), App. at 165; 1383(a)(2)(C)(i), (ii), App. at 185-86.

Under the applicable regulations, the benefits are deemed to be used "for the use and benefit of the beneficiary if they are used for the beneficiary's current maintenance", which includes "cost incurred in obtaining food, shelter, clothing, medical care, and personal comfort items". 20 C.F.R. §§ 404.2040(a)(1), App. at 214; 416.640(a), App. at 237. It is undisputed that the Department uses the benefits it receives as representative payee to pay for the cost of current care.

Thus, *Keffeler* forbids what the Commissioner's regulations explicitly permit—using benefits to pay for the beneficiary's current care. Moreover, the Commissioner has specifically stated in this case that the Department's use of benefits to pay for current care is proper under the regulations. See Brief For The United States As Amicus Curiae at pages 16-17, which was filed in response to an invitation from the Court. App. at 141.

C. This Case Presents An Important National Question

The petition should be granted because this case presents an important national question. The Department has attempted to contact every other state. To the best of our knowledge, in every state, public social service agencies at the state or local level are appointed representative payee for various beneficiaries and use the benefits to pay for current maintenance. The decision below thus calls into question the way in which public agencies in *every* state fulfill their important function as representative payee of last resort for social security beneficiaries. In addition, because of the substantial amount of federal benefits at issue, the decision below diminishes the incentive of states or local governments to act as representative payee for foster children and other beneficiaries within their custody.

Moreover, the importance of the question is not limited to state and local social service agencies. Many

beneficiaries must have representative payees appointed to receive their benefits. The question is how may those benefits be used. This is a fundamental question that goes to the heart of the social security and SSI programs, and it affects every representative payee appointed by the Commissioner. For instance, parents, such as the fathers in *Mellies* and *Nelson*, are appointed representative payee and use the benefits to pay for current maintenance. The decision below would appear to prohibit this practice.

D. *Keffeler* Is Wrong As A Matter Of Law

1. The Court should also grant the petition because *Keffeler* is wrong as a matter of law. To begin with, the plain language of 42 U.S.C. § 407(a) does not apply to the Department's use of the benefits to pay for current care. Section 407(a) provides that the right to future payment of benefits "shall not be transferable or assignable", and that none of the benefits "shall be subject to execution, levy, attachment, garnishment, or other legal process". The Department's use of benefits to pay for a foster child's care is neither an assignment of future payments, nor an execution, levy, attachment, garnishment, or other legal process against current payments within the ordinary meaning of those terms.

Moreover, § 407(a) must be read with 42 U.S.C. §§ 405(j), App. at 157, and 1383(a)(2)(A)(ii)(I), App. at 178, which authorize the Commissioner to appoint representative payees. Instead of violating § 407(a), the Department's use of the benefits actually implements a carefully crafted federal statutory plan to appoint responsible representative payees for needy children and ensure that benefits are properly used. The Commissioner investigates, appoints, and monitors representative payees to ensure that benefits are properly used. The Commissioner's regulations provide that a payee may use benefits for the beneficiary's current care. 20 C.F.R. §§ 404.2035, App. at 213; 416.635(a), App. at 236. If the Commissioner finds that a representative payee has misused

benefits, the law requires the Commissioner to "promptly revoke certification for payment of benefits to such representative payee . . . and to certify payment to an alternative representative payee". 42 U.S.C. §§ 405(j)(1)(A), App. at 157; 1383(a)(2)(A)(iii), App. at 179.

It is illogical to conclude that § 407(a) prohibits what §§ 405(j) and 1383(a)(2)(A)(ii)(I) permit, especially when the provisions are easily harmonized. Section 407(a) protects benefits from execution, levy, attachment, garnishment, or other legal process by a person who is not a representative payee. When a representative payee is appointed, it is the Commissioner's job to ensure that the payee uses the benefits properly. Indeed, creditors are generally prohibited from being appointed representative payee, unless the creditor falls within a specific exception to the prohibition. 42 U.S.C. §§ 405(j)(2)(C)(i)(III), (iii), App. at 160; 1383(a)(2)(B)(iii)(III), (v), App. at 181.

2. *Keffeler* is also flawed because the majority substituted its judgment for that of the Commissioner. This Court has "long recognized that considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer". *Chevron U.S.A., Inc. v. Natural Res. Def. Coun., Inc.*, 467 U.S. 837, 844 (1984). Congress expressly authorized the Commissioner to adopt regulations to implement Title II and Title XVI. 42 U.S.C. §§ 405(a), App. at 156; 1383(d)(1), App. at 200. A representative payee must use the benefits properly, but Congress left it to the Commissioner to define exactly how the benefits were to be used. The majority in *Keffeler* did not even acknowledge the Commissioner's interpretation, let alone give it the deference that this Court has said it deserves.

The majority substituted its judgment for that of the Commissioner in two respects. First, it held that the Department, as representative payee, could not use the benefits to pay for a beneficiary's current care. The

Commissioner's regulations expressly provide that such payments are permitted. 20 C.F.R. §§ 404.2040(a)(1), App. at 214; 416.640(a), App. at 237. Second, the majority concluded that using benefits to pay for current care was not in the best interest of the beneficiary. ("We seriously doubt using the SSA benefits to reimburse the state for its public assistance expenditure is . . . in the best interest of the beneficiary." App. at 28.) This conclusion is directly contrary to the conclusion reached by the Commissioner. The regulations provide that benefits have been used "for the use and benefit of the beneficiary if they are used for the beneficiary's current maintenance". 20 C.F.R. §§ 404.2040(a)(1), App. at 214; 416.640(a), App. at 237.

3. The cases relied on by the Washington Supreme Court do not support a departure from the plain meaning of § 407(a) and the Commissioner's regulations. None of these decisions involve a representative payee—in each case, instead, the benefits were paid to the beneficiary directly. In *Philpott*, for instance, the recipient of social security benefits entered into an agreement to reimburse the county welfare board for payments received. *Philpott*, 409 U.S. at 414. When the recipient wouldn't pay, the county "sued to reach the bank account under the agreement to reimburse". *Id.* at 415. The county's suit fell within the express prohibition of § 407(a), which prohibits "execution, levy, attachment, garnishment, or other legal process".

Bennett involved individuals incarcerated in Arkansas prisons who received social security benefits. No representative payee was appointed for the prisoners. A state law "authorize[d] the State to seize a prisoner's property or 'estate' in order to help defray the cost of maintaining its prison system". *Bennett*, 485 U.S. at 396. Once again, the seizure of benefits fell directly within the prohibition of § 407(a), and the Court refused to read into § 407 "an 'implied exception' that would allow attachment of otherwise exempted federal payments simply because the State has

provided the recipient with 'care and maintenance'". *Id.* at 397.[13]

4. The majority also attempts to support its decision by characterizing the Department as a creditor. The majority focuses on the word "reimbursement". ("Furthermore, the bare logic of reimbursement also implies a creditor-debtor relationship." App. at 26.) The majority's reasoning on this point is flawed. The Department is not a creditor. The Department only reimburses itself in an accounting sense in that it pays for care first and then uses the social security and SSI benefits. App. at 61, ¶ 54. For example, in February the Children's Administration pays providers for the child's January foster care expenses. In March, after the accounting is performed, the Trust Fund Unit applies the January benefit for the care provided in January. However, the result would be exactly the same if the Department sent the January benefit to the foster parent in January, along with a second public assistance check to make up the difference. In this situation, the child receives the benefits and the Department would pay out fewer public assistance dollars—but there would be no reimbursement.[14]

---

[13] *Keffeler* also relied upon *Brinkman v. Rahm*, 878 F.2d 263 (9th Cir. 1989), and *Crawford v. Gould*, 56 F.3d 1162 (9th Cir. 1995). Neither of these cases involved a representative payee. In *Brinkman*, the class was defined as "those patients who receive Social Security Old Age Survivor's and Disability Insurance (OASDI) benefits, and for whom the state is not the representative payee". *Brinkman*, 878 F.2d at 264 (emphasis added). In *Crawford*, the class included patients "who receive Social Security benefits which are deposited in the patient's personal deposit fund, for whom the State is not the representative payee, and for whom these funds have been or are subject to being applied as payments towards the costs of the patient's care and treatment at the hospital". *Crawford*, 56 F.3d at 1163 n.1.

[14] The majority cites Wash. Rev. Code § 74.13.060 to support its notion that reimbursement establishes a creditor-debtor relationship. App. at 26. In fact, the statute provides reimbursing public assistance "expended on behalf of said *person during the period for which the*

This is consistent with the Commissioner's regulations which provide that a " payee may not be required to use benefit payments to satisfy a debt of the beneficiary, *if the debt arose prior to the first month for which payments are certified to a payee*". 20 C.F.R. §§ 404.2040(d), App. at 216; 416.640(d), App. at 239 (emphasis added). Thus, if benefits are certified in January, a payee cannot be required to pay a debt that arose in December. This rule does not prohibit using January benefits to pay for the cost of care in January. Indeed, even if the debt arose prior to the first month for which payments were certified, a payee may satisfy the debt "if the current and reasonably foreseeable needs of the beneficiary are met". 20 C.F.R. §§ 404.2040(d), App. at 216; 416.640(d), App. at 239.

CONCLUSION

For the foregoing reasons the Petition For A Writ Of Certiorari should be granted.

CHRISTINE O. GREGOIRE
Attorney General

William Berggren Collins
Sr. Assistant Attorney General
Counsel of Record

1125 Washington Street SE
Olympia, WA 98504-0100
360-753-6245

Walter Dellinger
Sri Srinivasan
O'Melveny & Myers
555 13th Street NW
Washington, D.C. 20004
202-383-5300

Counsel for Petitioners

---

benefits, payments, funds or *accruals were paid*". Wash. Rev. Code § 74.13.060(2), App. at 26, 253 (emphasis added). Thus, January benefits go to pay the January cost of care. As described above, that is exactly how the Department operates.

(2)

01 1420 MAR 14 2002

OFFICE OF THE CLERK

No. ____

IN THE SUPREME COURT OF THE UNITED STATES

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, ET AL.,

PETITIONERS,

v.

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, GUARDIAN, AND OTHER PERSONS SIMILARLY SITUATED,

RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

CHRISTINE O. GREGOIRE
Attorney General

William Berggren Collins
Sr. Assistant Attorney General
Counsel of Record

1125 Washington Street SE
Olympia, WA 98504-0100
360-753-6245

Counsel for Petitioners

25988

APPENDIX TABLE OF CONTENTS

Guardianship Estate of Keffeler 1
145 Wash. 2d 1, 32 P.3d 267 (2001)

Order Denying Motion For Reconsideration 40

Mandate 42

Order on Remand.....43

Court's Findings Of Fact On Order Of Remand From Supreme Court 46

Plaintiff's Order Granting Plaintiff's Motion For Summary Judgment.....112

Memorandum Opinion.....122

Order Allowing Amendment Of Complaint 131

Order Granting Amendment Of Order Certifying Class Action 133

Order Certifying Case To Proceed As A Class Action, Defining The Class And Denying Defendants' Motion To Dismiss.....136

Order List: 534 U.S.....141

Order (recall and stay) 142

Letter From Ronald Carpenter to Counsel.....143
(stay motion denied)

42 U.S.C.....145

20 C.F.R.....205

Wash. Rev. Code 245

Wash. Admin. Code.....256

Supreme Court of Washington,
En Banc.

GUARDIANSHIP ESTATE OF Danny KEFFELER, by Wanda Pierce, Guardian, and other persons similarly situated, Respondents,

v.

STATE of Washington DEPARTMENT OF SOCIAL AND HEALTH SERVICES; Lyle Quasim, Director of the Department of Social and Health Services; and Michael R. Hobbs, Program Manager for the Department of Social and Health Services,

Appellants.

No. 67680-1.

Argued Nov. 8, 2000.
Decided Oct. 11, 2001.

SANDERS, J. The plaintiff class asks us to hold the Washington State Department of Social and Health Services (DSHS) violated that provision of the Social Security Act (the Act), 42 U.S.C. § 407(a) which forbids creditor access to Social Security benefits. Here DSHS acts as a representative payee under 42 U.S.C. § 405(j) for foster children and then applies the Social Security benefits to reimburse the state budget for payments made to foster parents for the basic needs of those children. We are also asked if DSHS's actions deprived the foster children of their property absent due process and abridged their right to equal protection of the laws. Lastly the plaintiff class asserts entitlement to an award of reasonable attorney fees.

We hold DSHS as a representative payee violates § 407(a) of the Act when it applies Social Security benefits to the current maintenance needs of foster children for whom it acts as representative payee. Given this disposition we find it unnecessary to consider the due process and equal protection claims. We remand for further proceedings, including further consideration of the reasonable attorney fee award.

ISSUES

1. Does DSHS violate § 407(a) of the Social Security Act when, as a representative payee under § 405(j) of the Act, it uses Social Security benefits to pay current maintenance costs of children in foster care?

2. Is the class entitled to an award of reasonable attorney fees?

FACTS

Foster care in Washington is provided by an amalgam of federal, state, and private funds, although the program is largely state-funded. In fiscal year 2000, for example, the total foster care budget was $37.4 million in state funds, plus approximately $12.9 million in federal funds. To be eligible for federal funding under the Social Security Act, a state must provide foster care services under a plan approved by the Secretary of Health and Human Services. 42 U.S.C. § 670.[1] RCW 74.13.031[2] authorizes

[1] The Act authorizes federal assistance for state foster care services:

> For the purpose of enabling each State to provide, in appropriate cases, foster care and transitional independent living programs for children who otherwise would be eligible for assistance under the State's plan approved under part A of this subchapter [as such plan was in effect on June 1, 1995] and adoption assistance for children with special needs, there are authorized to be appropriated for each fiscal year (commencing with the fiscal year which begins October 1, 1980) such sums as may be necessary to carry out the provisions of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans under this part.

42 U.S.C. § 670.

[2] RCW 74.13.031 provides, in pertinent part:

> The department shall have the duty to provide child welfare services and shall:
>
> (1) Develop, administer, supervise, and monitor a coordinated and comprehensive plan that establishes, aids, and strengthens services for the protection and care of runaway, dependent, or neglected children.
>
> (2) Within available resources, recruit an adequate number of prospective adoptive and foster homes, both regular and specialized, i.e. homes for children of ethnic minority, including Indian homes for Indian children, sibling groups, handicapped and emotionally disturbed, teens, pregnant and parenting teens, and annually report to the governor and the legislature concerning the department's success in: (a) Meeting the need for adoptive and foster home placements; (b) reducing the foster parent turnover rate; (c) completing home studies for legally free children; and (d) implementing and operating the passport program required by RCW 74.13.285.

DSHS to provide foster care services to children in Washington.

Foster care is generally provided in Washington to children who have been abused or neglected or have become the responsibility of the state through our juvenile

justice laws, Title 13 RCW.[3] On behalf of these children, the state pays a schedule of monthly allotments to foster parents who in turn pay for the basic necessities such as food, shelter, and clothing for the children in their charge. As of September 1999, there were 10,578 foster children under DSHS's supervision. An additional 2,352 children were in the custody of tribal authorities or child care agencies for whom DSHS paid support. Five hundred sixty-seven additional children received support through DSHS's Division of Developmental Disabilities (DDD).

Although DSHS provides foster care for children who need it, it is Washington public policy to attempt to recover the costs of foster care from the parents of children in foster care who are primarily liable for the costs of that care:

> It is declared to be the public policy of this state that this chapter be construed and administered to the end that children shall be maintained from the resources of responsible parents, thereby relieving, at least in part, the burden presently borne by the general citizenry through welfare programs.

RCW 74.20A.010 (support of dependent children act). *See also In re Welfare of Feldman*, 94 Wash.2d 244, 250, 615 P.2d 1290 (1980) ("It is true that parents bear the primary responsibility for the support of their children.").

In the context of foster care, DSHS implemented the Legislature's cost recovery policy by regulation:

---

[3] *See, e.g.*, RCW 13.34.210 (if a child has no parent with parental rights, court may commit child to DSHS's custody; DSHS in turn may seek adoption for child or place the child in foster care or other suitable placement).

> Parents of children in foster care paid by the department satisfy their legal obligation to support their children when there is a superior court order for support by paying the amounts specified in the order or in the absence of a superior court order, by paying the amount determined under RCW 74.20A.055 and regulations promulgated in chapter 388-11 WAC.

Former WAC 388-70-075(1) (1976), *repealed by* St. Reg. 01-08-047 (Apr. 30, 2001).

If parents of a foster child are unavailable or unwilling to reimburse DSHS for the costs of foster care, DSHS may reimburse itself using "moneys and other funds" that come into its possession while the child is in its custody. RCW 74.13.060 provides, in pertinent part:

> The secretary [of the Department] or his designees or delegatees shall be the custodian without compensation of such moneys and other funds of any person which may come into the possession of the secretary during the period such person is placed with the department of social and health services pursuant to chapter 74.13 RCW. As such custodian, the secretary shall have authority to disburse moneys from the person's funds for the following purposes only and subject to the following limitations:
>
> (1) The secretary may disburse any of the funds belonging to such person for such personal needs of such person as the secretary may deem proper and necessary.

(2) The secretary may apply such funds against the amount of public assistance otherwise payable to such person. This includes applying, as reimbursement, any benefits, payments, funds, or accrual paid to or on behalf of said person from any source against the amount of public assistance expended on behalf of said person during the period for which the benefits, payments, funds or accruals were paid.

DSHS implemented RCW 74.13.060 with the following regulation:

(1) If a child in foster care is entitled to financial benefits the income received shall be used on behalf of the child to help pay for the cost of the foster care received, except for resources held in trust for an American Indian child according to provisions in WAC 388-28-650.

(a) Income includes SSI [Supplemental Security Income], RSDI [retirement survivors disability insurance], veteran's benefits, railroad retirement benefits, inheritances, or any other payments for which the child is eligible, unless specifically exempted by the terms and conditions of the receipt of the income.

(b) Receipt of other income as described above shall not relieve the child's responsible parent(s) of the liability for payment of child support in accordance with WAC 388-70-075 through 388-70-084.

(2) Any person, agency, or court which receives any payments on behalf of a child in foster

care shall remit such payments to the office of support enforcement, in accordance with WAC 388-70-082.

(3) Resources in the control of a child in foster care shall be treated in accordance with WAC 388-28-400 through 388-28-455.

Former WAC 388-70-069 (1983), *repealed by* St. Reg. 01-08-047 (Apr. 30, 2001).

Where a child is eligible for Social Security benefits,[4] federal law provides a process by which a "representative payee" may be appointed to administer the funds on behalf of the child. Section 405(j)[5] of the Act authorizes the Social Security Administration (Administration or SSA) to appoint such a "representative payee" for the child beneficiary:

If the [Administration] determines that the interest of any individual under this subchapter would be served thereby, certification of payment of such individual's benefit under this subchapter may be made, regardless of the legal competency or incompetency of the individual, either for direct payment to the individual, or for his or her use and benefit, to another individual, or an organization,

[4] Children are eligible to receive either Title II Social Security Administration (SSA) benefits (based on the death or disability of a parent), or Title XVI Supplemental Security Income (SSI) benefits (based on the child's own disability), or both.

[5] Section 405(j) authorizes the appointment of a representative payee to receive SSA benefits under Title II. The appointment of a representative payee to receive SSI benefits under Title XVI is also authorized. 42 U.S.C. § 1383(a)(2)(A)(ii).

> with respect to whom [certain] requirements ... have been met (hereinafter in this subsection referred to as the individual's "representative payee").

42 U.S.C. § 405(j)(1)(A); *see also* 20 C.F.R. § § 404.2001(b), 416.601(b). Generally, a representative payee is appointed whenever a beneficiary is under 18 years of age. The Administration has an order of preference for representative payees for such children, generally favoring the appointment of parents or relatives of the child; it will appoint an authorized agency only if no parent or guardian is available. The appointment of a state agency like DSHS is the last on that priority list.[6] 42 U.S.C. § § 405(j)(3)(B), 405(j)(2)(C)(iii)(III); 42 U.S.C. § 1383(a)(2)(B); 20 C.F.R. § § 404.2021, 416.621.

The Code of Federal Regulations explains the function of representative payees:

> A representative payee may be either a person or an organization selected by us [the Social Security Administration] to receive benefits on behalf of a beneficiary. A representative payee will be selected if we believe that the interest of a beneficiary will be served by representative payment rather than direct payment of benefits. Generally, we appoint a representative payee if we have determined that the beneficiary is not able to manage or direct the management of benefit payments in his or her interest.

---

[6] The Act prohibits the appointment of a creditor as representative payee except, inter alia, where the creditor is a relative or legal guardian of the beneficiary, or the creditor is a licensed state facility. 42 U.S.C. § 405(j)(2)(C)(i)(III); 42 U.S.C. § 1383(a)(2)(B)(iii).

20 C.F.R. § 404.2001(a).

The appointment of a representative payee such as DSHS may be challenged. The Administration must notify the beneficiary or legal guardian of the appointment of a representative payee and must advise that the beneficiary has the right to a hearing before the Commissioner and judicial review to challenge any appointment. 42 U.S.C. § 405(j)(2)(E)(i), (ii); 42 U.S.C. § 1383(a)(2)(B)(xi), (xii).

Representative payees, including state agencies, must use Social Security benefits for the beneficiary, and in the beneficiary's best interest, under guidelines set forth in the Administration's regulations. 20 C.F.R. § § 404.2035(a), 416.635(a). The regulations specifically authorize representative payees to use benefits to defray the cost of the beneficiary's "current maintenance," including food, shelter, clothing, medical care, and personal items. The regulations state, in relevant part:

> We will consider that payments we certify to a representative payee have been used for the use and benefit of the beneficiary if they are used for the beneficiary's current maintenance. Current maintenance includes cost incurred in obtaining food, shelter, clothing, medical care, and personal comfort items.

20 C.F.R. § § 404.2040(a)(1), 416.640(a). The regulations also specify that the cost of institutionalized care is an authorized expense. 20 C.F.R. § § 404.2040(b), 416.640(b).

When monthly SSA and/or SSI benefits exceed the amount needed for current maintenance, the representative payee is required to conserve and invest the remaining

benefits in trust for the benefit of the beneficiary. 20 C.F.R. § § 404.2045(a), (c), 416.645(a), (c). Large amounts of retroactive benefits must be placed in a separate, dedicated account and may be used only for certain, enumerated expenditures. 20 C.F.R. § 416.640(e).

If a representative payee misuses benefits, the representative payee may be removed by the Administration. 42 U.S.C. § 405(j)(1)(A); 42 U.S.C. § 1383(a)(2)(A)(iii). Moreover, a representative payee's misuse of the beneficiary's funds is a felony. 42 U.S.C. § 408(a)(5). Given the criminal penalty for misuse of funds, some courts have inferred a fiduciary relationship between beneficiary and representative payee, although the statute and implementing regulations do not say as much. *See, e.g., Garvey v. Worcester Housing Auth.*, 629 F.2d 691 (1st Cir.1980), *cert. denied*, 450 U.S. 925, 101 S.Ct. 1379, 67 L.Ed.2d 356 (1981); *Bradley v. Austin*, 841 F.2d 1288 (6th Cir.1988); *C.G.A. v. State*, 824 P.2d 1364 (Alaska 1992); *In re Estate of Merritt*, 272 Ill.App.3d 1017, 209 Ill.Dec. 502, 651 N.E.2d 680 (1995); *Rice v. Perales*, 156 Misc.2d 631, 594 N.Y.S.2d 962 (Sup.Ct.), *aff'd*, 193 A.D.2d 1135, 599 N.Y.S.2d 211 (1993).

In September 1999, of the thousands of foster children in the custody of DSHS pursuant to Title 13 and chapter 74.13 RCW, 1,480 foster care children were receiving Social Security benefits. Nine hundred twenty-three children were receiving SSI benefits, 469 were receiving SSA benefits, and 88 children were receiving both. DSHS acted as a representative payee for 1,411 children in foster care and in DDD.

Two units within DSHS perform the actual function of representative payee for the Social Security benefits of class members. The Children's Administration

(Children's) provides services to all foster children regardless of whether the children also receive Social Security benefits. These services include monitoring the child's needs, determining special needs, and developing an individual service plan for each child. The Trust Fund Unit accounts for Social Security benefits received by DSHS as representative payee.

When a child is placed in foster care, Children's identifies those children who may be eligible for Social Security benefits and makes an application on their behalf. If Children's believes a denial of benefits is erroneous, Children's will appeal for the child. In each case, DSHS also applies to the Administration to become the representative payee for the child (except for developmentally disabled children).

When DSHS receives Social Security benefits as representative payee for a foster child the funds are deposited in a Foster Care Trust Fund Account at the Office of the State Treasurer. Although the funds are in a single account, the Trust Fund Unit maintains an individual "subsidiary account" for each child for whom benefits are received.[7]

Children's is responsible for providing the current maintenance needed by a child in foster care. However,

---

[7] The only exception to this practice occurs when DSHS receives a lump sum payment of SSI benefits of over six times the monthly benefit amount. Since October 1996, these lump sum payments have been deposited by the Administration directly into a dedicated account at a local bank. These funds cannot be used for basic foster care expenses, and can be expended only for special needs, primarily related to a child's impairment. Prior to October 1996, these funds were used to reimburse Children's for past foster care expenses.

Children's does not normally purchase a child's food, shelter, clothing, and other items directly. Rather, such items are purchased and provided by the child's foster parent. Children's pays the foster parent a fixed amount based on a schedule. Where a special item or expenditure is needed, the Trust Fund Unit will issue a check to either the foster parent or directly to a store or service provider. Such expenditures are authorized by DSHS in its discretion as the representative payee.

The Trust Fund Unit typically uses a child's Social Security benefits to pay for a child's basic foster care expenses. Every month, Children's generates a report showing the amount of money paid by Children's to a care provider for each child in foster care. The Trust Fund Unit uses this report to determine how much of a child's SSI and SSA funds it will direct the state treasurer to pay to Children's. In general, if the amount in the trust fund account is adequate to reimburse the entire cost of foster care, as claimed by Children's, the entire claimed amount is paid. If the funds in the trust fund account are not adequate to reimburse the entire cost of foster care, the Trust Fund Unit uses up to the amount available in the trust fund account. The amount to be paid for foster care is transferred from the Foster Care Trust Fund Account to Children's.

As representative payee, DSHS has the discretion to expend a child's SSA or SSI funds on items other than current basic foster care expenses. Children's staff may request that a child's benefits be used for extra items or special needs, such as computers, educational expenses, summer camps, counseling, toys, clothing, athletic equipment and orthodontics. When in doubt, the Trust Fund Unit consults with the Administration to determine whether a particular expenditure is authorized.

Children in foster care for whom a person or entity other than DSHS serves as representative payee still receive state-supported foster care. Foster children who do not receive any Social Security benefits are eligible for state funding for extra items and special needs if funds are available in the state foster care budget.

DSHS is also authorized to conserve and invest Social Security benefits for foster children. Funds not used for basic foster care or special needs are deposited into a single interest-bearing account. The interest earned on this account is credited to the child's individual subsidiary account. These funds are ultimately forwarded to a successor representative payee or paid directly to the child upon emancipation.

There is a $2,000 resource limit on any child receiving SSI benefits (although funds deposited to the dedicated account are not subject to this limit). DSHS monitors each child's subsidiary account to ensure the balance remains below the limit. When a balance is approaching the resource limit, the Trust Fund Unit notifies Children's of the need to spend down the account balance. Children's determines what special needs might be met using the excess funds and requests disbursements from the Trust Fund Unit. DSHS uses reimbursements to Children's for current expenses as a means of not exceeding the $2,000 limit.[8]

---

[8] Prior to October 1996, some dedicated accounts as well as subsidiary accounts were spent down by reimbursing Children's for previous basic care expenditures. In addition, the practice of "account sweeping" sometimes results in DSHS's taking all of a child's Social Security funds and applying those funds to accumulated (past) reimbursable foster care expenses.

Federal law forbids creditor access to Social Security benefits. 42 U.S.C. § 407(a) provides:

> The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

Commonly referred to as an antialienation provision, this statute evinces Congress's intent to remove Social Security benefits from the reach of creditors employing legal process. *Dionne v. Bouley,* 757 F.2d 1344, 1355 (1st Cir.1985). The statute also prohibits the voluntary transfer or assignment of Social Security benefits by the beneficiary. *Gardner v. Ewing,* 88 F.Supp. 315 (S.D.Ohio), *aff'd,* 185 F.2d 781 (6th Cir.1950), *rev'd on other grounds,* 341 U.S. 321, 71 S.Ct. 684, 95 L.Ed. 968 (1951); *accord Hurd v. Ill. Bell Tel. Co.,* 136 F.Supp. 125 (N.D.Ill.1955), *aff'd,* 234 F.2d 942 (7th Cir.), *cert. denied,* 352 U.S. 918, 77 S.Ct. 216, 1 L.Ed.2d 124 (1956). As the United States Supreme Court noted in *Bennett v. Arkansas,* 485 U.S. 395, 397, 108 S.Ct. 1204, 99 L.Ed.2d 455 (1988), any state law contrary to § 407(a) runs afoul of the Supremacy Clause. *Accord Crawford v. Gould,* 56 F.3d 1162, 1165 (9th Cir.1995).

The present case arose from DSHS's treatment of class representative Danny Keffeler. Apparently, an overzealous Department employee sought to have Danny's grandmother and guardian removed as representative payee. DSHS now asserts this was the only time it has ever

tried to remove a private representative payee. After four years of litigation involving just Danny, his guardian filed a class action lawsuit in the Okanogan County Superior Court on Danny's behalf and on behalf of others "similarly situated." Clerk's Papers (CP) at 1-15. According to the amended complaint, DSHS has now abandoned its efforts to become the representative payee for Danny.

The trial court certified the class, and later amended the certification to include children receiving both SSA and SSI benefits. The class now consists of "All foster children within the State of Washington, past, present, and future in foster care that receive [either SSA or SSI benefits] for whom the State of Washington acts or has sought to act as 'representative payee.' " CP at 574.[9]

The gravamen of the class action is that DSHS's actions violate the antialienation provision of 42 U.S.C. § 407(a) where DSHS, as representative payee, uses a foster child's Social Security benefits to reimburse the state for the costs of foster care. The class also presents several constitutional causes of action. First, the class alleges DSHS has acted irrationally, invidiously, and arbitrarily and capriciously in violation of 42 U.S.C. § 1983. Second, the class alleges DSHS's actions violate the due process clauses of the Washington Constitution and the Fourteenth Amendment. Third, the class alleges the state discriminates against the class members "by subjecting them to a lower

---

[9] The actual number of class members cannot be determined from records available to DSHS. Based on available records there are 7,798 class members dating back to July of 1991. According to the trial court, "the claims of the class extend back 18 years plus one year for a total of 19 years back from the filing of the plaintiffs' action, i.e. to 1979." Court's Findings of Fact on Order of Remand from Supreme Court at 18.

standard of living than children who are not so situated." Finally, the class alleges the state "maliciously, recklessly and wantonly is invading federally protected funds for its own improper advantage, to the detriment of Plaintiff and all other foster children's financial and emotional well-being." CP at 13-14.

In its prayer for relief, the class seeks (i) a permanent injunction enjoining DSHS from using Social Security payments to offset the cost of foster care; (ii) reimbursement to class members of all Social Security payments used by DSHS for reimbursement; and (iii) an award of attorney's fees.

DSHS moved to dismiss the action, arguing the Administration was an indispensable party that cannot be sued in state court. In response, the class argued it was not claiming the Administration has done anything wrongful, only that DSHS is unlawfully taking Social Security benefits from the class members in violation of federal law. The trial court denied the motion, without analysis, in certifying the class.

On cross motions for summary judgment, the trial court filed a memorandum opinion and entered judgment in favor of the class. The trial court held DSHS's use of Social Security benefits to reimburse the cost of foster care violates 42 U.S.C. § 407(a), and DSHS violates procedural due process by failing to provide notice, beyond that required by federal law and regulation, of the "intended result" of the appointment of DSHS as representative payee. The trial court did not address the class' remaining constitutional arguments, nor did it specifically conclude DSHS was liable for civil rights violations under 42 U.S.C. § 1983.

The trial court's judgment provided the following relief:

1. An injunction preventing DSHS from taking action to replace any private representative payee.

2. An injunction preventing DSHS from requiring any private representative payee to repay DSHS for the cost of maintaining a child in foster care from Social Security benefit payments.

3. An injunction requiring DSHS to provide written notice containing certain information to a child's parent(s) or legal guardian whenever DSHS applies to become a representative payee for the child.

4. An injunction preventing DSHS from using Social Security payments to reimburse the costs of foster care.

5. An order requiring DSHS to produce an accounting of Social Security fund disbursements for all children that had been in the custody of DSHS for the purpose of receiving foster care.

6. An order of restitution of Social Security funds used to reimburse DSHS for foster care expenses.

7. An award of attorney's fees, with the amount to be determined in the future.

DSHS appealed the trial court's judgment to Division Three of the Court of Appeals, although no error

was assigned to items 1 or 2 referenced above. Because of the importance of the issues in this case, the Court of Appeals certified the case to us and we granted the certification. After the first oral argument of the case, we remanded the matter to the trial court pursuant to RAP 9.11. The parties have supplemented the record and the trial court has made findings of fact.

ANALYSIS

A. DSHS's actions as representative payee violated 42 U.S.C. § 407(a).

Simply put, if DSHS is appointed representative payee for a foster child it will confiscate the child's SSI money to benefit the state. However, if *anyone else* is appointed, the state will bear the cost of foster care, and the child's SSI will be available to benefit the child in addition to the state- funded foster care program. The issue is whether this confiscation violates federal law. For the reasons which follow we believe it does.

DSHS admits it would probably not even apply to be a representative payee if it could not rely on the child's SSI benefits to reimburse the cost of care. By the same token, DSHS admittedly cannot actively seek reimbursement from benefits paid to *private* representative payees because Congress specifically protects Social Security benefits from transfer, assignment, execution, levy, attachment, garnishment, or other legal process under 42 U.S.C. § 407(a).[10] [FN10] Thus, DSHS receives

[10] The federal code provides, in pertinent part,

> The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

42 U.S.C. § 407(a). This section was made applicable to Title XVI benefits by 42 U.S.C. § 1383(d)(1).

reimbursement for foster care only if it serves as a representative payee, and it only serves as representative payee so it can confiscate the child's money.[11]

This scheme stands in stark contrast to 20 C.F.R. § 404.2021 which expressly provides, "Our primary concern is to select the payee who will best serve the *beneficiary's* interest." (Emphasis added.) Obviously the child is better off with any payee other than the state because DSHS must provide foster care under state law *regardless* of whether it receives a reimbursement.[12] DSHS's self-prioritization is extremely disquieting in the face of a regulatory mandate that we consider these disenfranchised children before enriching government coffers.

1. DSHS as a creditor

Whether DSHS acts as a *creditor* when it reimburses itself for foster care costs out of the foster children's Social Security Administration (SSA)

[11] The trial court found "*[f]or the sole purpose of obtaining reimbursement for foster care costs,* DSHS applies to the Social Security Administration to be appointed representative payee for all children in foster care who are eligible for social security benefits." Clerk's Papers (CP) at 623 (Trial Court's Mem. Op. (Sept. 29, 1998) at 3) (emphasis added).

[12] DSHS forecasted it would receive $6.733 million from such reimbursement, or fully 18 percent of the state's contribution to the foster care budget of $37 million, for fiscal year 2000. CP at 1899, 1911 (Trial Court's Findings of Fact on Order of Remand, Exs. B, F).

entitlements is the crucial question. If DSHS's reimbursement scheme is that of a creditor, the antiattachment provisions of § 407(a) apply and DSHS's cost recovery policy runs afoul of a federal statute which preempts state law under the Supremacy Clause of the United States Constitution. U.S. Const. art. VI, cl. 2.

The facial logic of DSHS's reimbursement scheme demonstrates a creditor relationship, a relationship involving creditor-type acts, vis-à-vis foster children and their SSA benefits. Further, while no federal case addresses the peculiar set of facts involved here, the course of federal precedent in similar situations arising under § 407(a) undercuts the claim that DSHS complies with federal law.

In *Philpott v. Essex County Welfare Bd.*, 409 U.S. 413, 93 S.Ct. 590, 34 L.Ed.2d 608 (1973), the United States Supreme Court described the broad protection § 407 affords Social Security benefits. *Philpott* declared that § 407 barred New Jersey's attempt to reach federal Social Security disability benefits in order to reimburse the state for public assistance expenditures made on behalf of the petitioners. State welfare recipients were made to execute an agreement, as a condition precedent to receiving welfare benefits, to reimburse the county welfare board with any funds that came into their possession. When Philpott refused to turn his SSA disability benefits over to the welfare board the latter sued to enforce the agreement. The Supreme Court held § 407 on its face prohibited New Jersey from reaching the petitioner's federal disability payments, explaining, "We see no reason why a State, performing its statutory duty to take care of the needy, should be in a preferred position as compared with any other creditor." *Philpott,* 409 U.S. at 416, 93 S.Ct. 590.

Responding to the argument New Jersey may not be a creditor with respect to the SSA benefits, the Court continued: "§ 407 does not refer to any 'claim of creditors'; it imposes a broad bar against the use of any legal process to reach all social security benefits. That is broad enough to include all claimants, including a State." 409 U.S. at 417, 93 S.Ct. 590. This language evinces a federal policy with respect to SSA benefits--the "broad bar"--which controls this case.

The Supreme Court again took up § 407(a) in *Bennett v. Arkansas,* 485 U.S. 395, 108 S.Ct. 1204, 99 L.Ed.2d 455 (1988), where Arkansas attempted to attach certain federal benefits paid to individuals incarcerated in Arkansas prisons to reimburse the state for maintaining a prison system. Arkansas argued an "implied exception" to the broad bar of § 407(a) (as here) where the state is providing public money for the care and maintenance of the SSA beneficiary. The Court found no such "care and maintenance" exception for states "given the express language of § 407(a) and the clear intent of Congress that Social Security benefits not be attachable." *Bennett,* 485 U.S. at 397-98, 108 S.Ct. 1204. DSHS in the instant case attempts to evade § 407(a) by arguing that it simply provides the "care and maintenance" intended by the SSA. We find that argument as unavailing, notwithstanding some factual dissimilarities, as did the Supreme Court.

Closer to home, the Ninth Circuit ruled in *Brinkman v. Rahm,* 878 F.2d 263 (9th Cir.1989) DSHS may not deduct SSA benefits as reimbursement for the costs of care and maintenance, paid out of public funds, for involuntarily committed mental health patients in state hospitals. The court noted, "The state collects this debt from the appellees by withdrawing [Old Age Survivor's and Disability Insurance] funds from appellees' accounts at the state

hospital accounting offices," finding § 407 preempts this procedure. *Brinkman*, 878 F.2d at 264. There is not a significant enough difference between DSHS's methods in *Brinkman* and its methods of reaching the foster children's SSA benefits in this case[13] to justify a different result.

The Ninth Circuit again addressed the issue in *Crawford v. Gould*, 56 F.3d 1162 (9th Cir.1995) where, under California law, patients committed to state psychiatric hospitals were held responsible for the costs of their own incarceration. California accordingly required all funds and income, including SSA benefits, to which the patient was entitled to be placed in a hospital trust account from which the state could deduct as reimbursement the costs of care and maintenance expended on the patient. The state deducted the money whether or not the patient authorized the deduction. Holding § 407 preempted this procedure, the Ninth Circuit held:

---

[13] DSHS's actual practice, as described by its Office Chief for the Office of Federal Funding in the Division of Program and Policy for the Children's Administration, is:

> to apply to the Social Security Administration (SSA) to be the Representative Payee for social security monies whenever a child is placed in foster care. If SSA chooses to make DCFS [Division of Children and Family Services] the Representative Payee, the actual checks are sent to the Department's Office of Financial Recovery and the money is then *transferred to a suspense account* in the Department's Office of Accounting Services. *This money is used to reimburse the Department* for monthly foster care expenses, including food, clothing, shelter and other personal or medical expenses as governed by the Code of Federal Regulations. Excess money is placed in trust accounts which bear interest and the interest is reported to SSA.

CP at 120 (Aff. of Richard Anderson) (emphasis added).

> Our conclusion, that "other legal process" includes the procedure that California uses to deduct Social Security benefits, is consistent with the purpose of § 407. The nonassignment provision was not designed to preclude use of only the judicial process to obtain Social Security benefits. Rather, § 407(a) is designed "to protect social security beneficiaries and their dependents from the claims of creditors." The cramped reading of § 407 California urges would enable the state to obtain Social Security benefits through procedures that afford less protection than judicial process affords.

Crawford, 56 F.3d at 1166 (citations omitted).

These cases evince an expansive interpretation of the protections of § 407. The thrust of the case law is that Social Security benefits are, for all intents and purposes, beyond the reach of the state, however clever or subtle its attempt to seize them. *Philpott* and the cases in its line, including *Crawford*, are on point and persuasive.

The state claims *King v. Schafer*, 940 F.2d 1182 (8th Cir.1991) justifies DSHS's position, particularly because DSHS acts as a representative payee under 42 U.S.C. § 405(j) for the foster children in this case. In *King* the State of Missouri, as representative payee, received SSA benefits due involuntarily committed mental patients and reimbursed itself for the care and maintenance costs expended out of public funds for the patients. The patients argued the state's application to become the patient's representative payee to accept the patients' SSA benefits violated the "other legal process" provision of § 407(a). However the *King* court disagreed, noting the illogic of presuming § 407(a) would outlaw a procedure (applying to become representative payee) expressly authorized by §

405(j). "We cannot agree with the plaintiffs," wrote the *King* court, "that the Department's participation in the administrative proceeding to become a representative payee is the kind of coercive legal process envisioned by § 407(a)." *King*, 940 F.2d at 1185.

In light of *King*, and the fact that DSHS enjoys the status of representative payee (for most) of the foster children under § 405(j) and 20 C.F.R. § 404.2001(a), the significance of the state's representative payee status requires further discussion.[14]

The *King* plaintiffs challenged the state's procedure for applying to become representative payee, arguing that *procedure* (incident to which the state seized the mental health patient's SSA benefits) violated § 407(a) as "other legal process." However here it is not DSHS's procedure to apply to become the foster children's representative payee that is under attack; rather it is DSHS's practice of reimbursing itself from the foster children's SSA benefits once it *becomes* representative payee.

---

[14] Apparently DSHS is not the representative payee for Danny Keffeler, the class representative. Keffeler's grandmother apparently remained his representative payee, despite DSHS's zealous efforts to remove her. Br. of Appellants at 1-4. This fact is of some interest in light of *King*, because the *King* court found that with respect to those mental health patients for whom the state was *not* the representative payee, the state's attempts to reach the SSA benefits *did* constitute "other legal process" and was preempted by § 407(a). *King v. Schafer*, 940 F.2d 1182, 1185 (8th Cir.1991). We doubt the *King* court's distinction is internally consistent but refrain from entertaining those doubts, as it does not further the analysis on this point.

The difference is subtle, but the distinction is crucial. There is nothing ipso facto wrong with DSHS applying to become the representative payee for certain foster children, as § 405(j) and the SSA's accompanying regulations explicitly contemplate. We may even agree the representative payee application is not "other legal process." But it is equally clear the reimbursement process *is* "other legal process," given the definition of that phrase furnished by *Philpott, Brinkman, Bennett,* and *Crawford.* Accordingly, *King* must be distinguished, as Judge Burchard below correctly concluded, "[T]here is no legal basis for giving foster children less protection for their social security benefits than adult welfare recipients, state prisoners or involuntarily committed mental patients receive." CP at 627 (Trial Court's Mem. Op. (Sept. 29, 1998) at 7).

The state also claims *C.G.A.*, 824 P.2d 1364 supports its position. But *C.G.A.* only said the state may apply to become a representative payee. *C.G.A.*, 824 P.2d at 1366. The court *did not hold* the state could reimburse itself but deferred that determination to the Social Security agency under the doctrine of primary jurisdiction. *Id.* at 1370. Like *King*, *C.G.A.* stands for no more than the uncontested proposition DSHS may apply to become a representative payee.

DSHS reimbursement is barred by § 407(a) because despite DSHS's status as representative payee it performs the role of creditor when it takes the foster child's SSA entitlement to reimburse itself for moneys spent on the child. A representative payee may not be a "creditor of such individual who provides such individual with goods and services for consideration." 42 U.S.C. § 405(j)(2)(C)(i)(III).

However to claim DSHS does not provide goods and services for consideration is only to say that DSHS is not the kind of creditor which § 405(j) excludes from representative payee status. It is not to say the definition of a creditor "who provides such individual with goods and services for consideration," *id.*, is an exhaustive definition of other creditors who do not, nor is it to say DSHS cannot become a creditor or act like a creditor despite the fact it is a representative payee. If DSHS is allowed under § 405(j) to become a representative payee for the foster children, that fact does not establish the legality of taking the child's money.

Furthermore, the bare logic of reimbursement also implies a creditor-debtor relationship. Common sense and dictionary definition of "reimburse" is "[t]o pay back, to make restoration, to repay that expended; to indemnify, or make whole." *Black's Law Dictionary* 1287 (6th ed.1990). In common parlance one need not make a payback unless something "loaned" was "owed" by the recipient back to the payee. In fact the public policy of our state to recover the costs expended from public funds on foster children implies exactly this sort of debtor-creditor relationship.[15]

---

[15] That policy finds its statutory expression in RCW 74.13.060:

> The secretary [of DSHS] or his designees or delegatees shall be the custodian without compensation of such moneys and other funds of any person which may come into the possession of the secretary during the period such person is placed with the department of social and health services pursuant to chapter 74.13 RCW. As such custodian, the secretary shall have authority to disburse moneys from the person's funds for the following purposes only and subject to the following limitations:
>
> (1) The secretary may disburse any of the funds belonging to such person for such personal needs of such person as the secretary may deem proper and necessary.
>
> (2) The secretary may apply such funds against the amount of public assistance otherwise payable to such person. This includes applying, as reimbursement, any benefits, payments, funds, or accrual paid to or on behalf of said person from any source against the amount of public assistance expended on behalf of said person during the period for which the benefits, payments, funds or accruals were paid.

As DSHS presently conceptualizes the matter, RCW 74.13.060 (and its implementing regulation, former WAC 388-70-069)[16] requires it to reimburse itself for the public assistance it has meted out to foster children from money, including SSA entitlements, that come into the children's possession. If the Legislature and DSHS did not hold the costs of foster care were somehow "owed" back to the taxpayers, it would not claim the right of DSHS to "reimburse" itself on the taxpayer's behalf.

---

[16] The code states, in pertinent part, that:

> (1) If a child in foster care is entitled to financial benefits the income received shall be used on behalf of the child to help pay for the cost of the foster care received....
>
> (a) Income includes SSI, RSDI, veteran's benefits, railroad retirement benefits, inheritances, or any other payments for which the child is eligible, unless specifically exempted by the terms and conditions of the receipt of the income....
>
> (2) Any person, agency, or court which receives any payments on behalf of a child in foster care shall remit such payments to the office of support enforcement, in accordance with WAC 388-70-082.

Former WAC 388-70-069(1)(a), (2).

DSHS's representative payee status further undercuts the legality of its reimbursement process because a representative payee is charged under SSA regulation, 20 C.F.R. § 404.2035, with the responsibility to "[u]se the payments he or she receives only for the use and benefit of the *beneficiary* in a manner and for the purposes he or she determines, under the guidelines in this subpart, to be in the best interests of the *beneficiary.*" *Id.* § 404.2035(a) (emphasis added). We seriously doubt using the SSA benefits to reimburse the state for its public assistance expenditure is in all cases, or even some, "in the best interests of the beneficiary."

Using this money for the care and maintenance of the beneficiary, as required under 20 C.F.R. § 404.2035(a), would indeed be in the best interest of the beneficiary, but that is significantly different from using the money to reimburse the state for payments it made for the care and maintenance of the foster child--especially when that payment to the state cannot be legally compelled and, moreover, could be used or conserved for other special needs of the child.

As the state concedes, DSHS takes on a fiduciary or quasi-fiduciary role when it acts as representative payee. Br. of Appellants at 3. DSHS's reimbursement procedure hence constitutes a conflict of interest precisely because DSHS uses the SSA benefits it receives as representative payee in a manner inconsistent with the best interests of the foster children entitled to the money. However worthy cost recovery might be, DSHS cannot violate federal law at the expense of foster children to accomplish it.

Accordingly we hold each instance of reimbursement makes DSHS a creditor, or, if not a creditor, then at least committed to a creditor-type action that is

preempted by the "broad bar" of § 407(a). DSHS's application under § 405(j) to become a foster child's representative payee is at best immaterial to the analysis pertaining to its use of SSA benefits as reimbursement, or is at worst incompatible with that use of the benefits, as discussed above. Given our view that the state's actions violate the Supremacy Clause we find it unnecessary to consider other alleged constitutional infirmities such as deprivation of property without due process or denial of the equal protection of the law. *See* U.S. Const. amend. XIV.

B. The trial court award of attorney fees is not sufficiently specific.

The summary judgment which we review provided:

> It is hereby ordered that plaintiff should be awarded attorney fees, the amount of which, and the theory under which awarded, shall abide future ruling of this court.

Pl.'s Order Granting Pl.'s Mot. for Summ. J., CP at 666. The quoted language does not clarify the scope or basis of the attorney fee award and therefore must be revisited on remand.

Under the American Rule for attorney fees, compensation may be awarded only if authorized by contract, statute, or a recognized ground in equity. *Bowles v. Dep't of Ret. Sys.*, 121 Wash.2d 52, 70, 847 P.2d 440 (1993) (citing *Painting & Decorating Contractors of Am., Inc. v. Ellensburg Sch. Dist.*, 96 Wash.2d 806, 815, 638 P.2d 1220 (1982); *Seattle Sch. Dist. 1 v. State*, 90 Wash.2d 476, 540, 585 P.2d 71 (1978)). A well-established

equitable ground for awarding attorney fees is the common fund doctrine. *See Covell v. City of Seattle*, 127 Wash.2d 874, 891, 905 P.2d 324 (1995); *Bowles*, 121 Wash.2d at 70, 847 P.2d 440; *Seattle Sch. Dist. 1*, 90 Wash.2d at 542-45, 585 P.2d 71. It applies when a litigant preserves or creates a common fund for the benefit of an ascertainable category of persons. *Miotke v. City of Spokane*, 101 Wash.2d 307, 339, 678 P.2d 803 (1984) (quoting *Pub. Util. Dist. No. 1 of Snohomish County v. Kottsick*, 86 Wash.2d 388, 390-91, 545 P.2d 1 (1976)). The doctrine serves important public functions, and, in light of the purpose of the American Rule for attorney fees, should be applied only when such functions are met. *Accord Covell*, 127 Wash.2d at 892, 905 P.2d 324 (awarding attorney fees based on the common fund doctrine because the policy reasons "clearly are supported"). If properly applied, it provides greater access to those who otherwise may be unable to afford the services of an attorney. *Bowles*, 121 Wash.2d at 71, 847 P.2d 440.

Although the common fund doctrine provides an avenue whereby attorneys may be reimbursed from the fund created, other equitable and/or statutory grounds may allow an affirmative recovery against the nonprevailing party. 42 U.S.C. § 1988, for example, may provide an arguable basis for such an award; however, neither the trial court nor the parties have adequately articulated the equitable or statutory basis to impose liability against the state for reasonable attorney fees and expenses of litigation in the context of this case. This issue therefore must be considered further on remand.

CONCLUSION

We therefore hold DSHS violated § 407(a) of the Act when acting as the representative payee under § 405(j) of the Act by reimbursing itself for foster care payments,

contrary to the Supremacy Clause of the United States Constitution. We therefore affirm the trial court's result, remanding for further appropriate proceedings consistent with this opinion. The class shall recover its statutory costs on appeal without prejudice to a further award of reasonable attorney fees to be determined on remand.

ALEXANDER, C.J., and SMITH, JOHNSON and MADSEN, JJ., concur.

BRIDGE, J. (concurring in part/dissenting in part). I agree with the majority that the Washington State Department of Social and Health Services (DSHS) impermissibly used social security funds to reimburse itself for *past due* foster care payments. However, the majority goes too far in concluding that *any* use of social security funds by DSHS violates the antiattachment rule. Under a fair reading of the controlling federal statute and regulatory authority, DSHS is entitled to use the funds to pay for *current* maintenance costs, provided that any special needs of the children are satisfied first.

The federal law governing the appointment of representative payees and the use to which funds received on behalf of beneficiaries can be put is 42 U.S.C. § 405(j). RCW 74.13.060 allows DSHS to become the custodian (i.e. representative payee) "without compensation" of social security funds[1] payable to foster children:

> The secretary or his designees or delegatees shall be the custodian without compensation of such moneys and other funds of any person which may come into the possession of the secretary during the period such person is placed with the department of social and health services pursuant to chapter 74.13 RCW.

Tracking federal law, state law provides that once DSHS becomes the custodian ("representative payee") of the funds, DSHS is permitted to spend these funds *only* for the child's "personal needs" or to reimburse the state for "the amount of public assistance otherwise payable to" the child during the period for which the benefits were paid. RCW 74.13.060(1),

[1] Social Security (SSA) and Supplemental Security Income (SSI) benefits.

(2). Former WAC 388-70-069 (1983), *repealed by* 01-08-047 (Apr. 30, 2001), specifically allowed the social security funds to be used on behalf of the child to help defray the state's cost for foster care:

> (1) If a child in foster care is entitled to financial benefits the income received shall be used on behalf of the child to help pay for the cost of the foster care received, except for resources held in trust for an American Indian child according to provisions in WAC 388-28-650.
>
> (a) Income includes SSI, RSDI [retirement survivors disability insurance], veteran's benefits, railroad retirement benefits, inheritances, or any other payments for which the child is eligible, unless specifically exempted by the terms and conditions of the receipt of the income.

The majority concludes that "If DSHS's reimbursement scheme is that of a creditor, the antiattachment provisions of § 407(a) [of the Social Security Act] apply and DSHS's cost recovery policy runs afoul of a federal statute which preempts state law." Majority at 275. This statement is misleading in its scope. The Social Security Act, chapter 7, 42 U.S.C., does not rule out appointment of a creditor as representative payee in all situations. One of the exceptions to the antiattachment provisions of the act allows the appointment of "an individual who is determined by the Commissioner ... to be acceptable to serve." 42 U.S.C. § 405(j)(2)(C)(iii)(V). Thus, even if DSHS is characterized as a creditor, the commissioner of social security may find, and here *has* found, DSHS acceptable to serve as a representative payee

for these children in foster care.[2] The determination of the Social Security Act should control. The real issue, in my view, is the conflict of interest that arises when DSHS serves both as a representative payee and as a creditor for the *same* funds (which funds belong to the eligible child, the beneficiary) and the permissible uses of such funds.

Federal regulations not only govern the selection of a representative payee, but also define the lawful uses to which a representative payee may put the social security funds entrusted to its care. Specifically, a representative payee has a responsibility to "[u]se the payments he or she receives only for the use and benefit of the beneficiary in a manner and for the purposes he or she determines, under the guidelines in this subpart, to be in the best interests of the beneficiary." 20 C.F.R. § 416.635(a). *Current maintenance,* including the cost of food, shelter, clothing, medical care, and personal-comfort items is deemed to be for the use and benefit of the beneficiary. 20 C.F.R. § 416.640(a).

An example in the regulations clarifies the definition of "use and benefit" in the context of payments to an institution for current maintenance of the beneficiary and indicates a clear intent that special needs of the beneficiary should take precedence over general maintenance or reimbursement for care.[3] The example states that the

[2] If the commissioner may find an individual acceptable to serve, he may presumably find an entity acceptable to serve. This interpretation is reinforced by the fact that the commissioner routinely appoints entities such as DSHS to serve as representative payees.

[3] *Example:* An institutionalized beneficiary is entitled to a monthly Social Security benefit of $320. The institution charges $700 a month for room and board. The beneficiary's brother, who is the payee, learns the beneficiary needs new shoes and does not have any funds to purchase miscellaneous items at the institution's canteen.

representative payee should deduct the cost of special needs items from the amount paid to the institution, and also makes clear that any remaining money may be used for current maintenance.

The majority relies on four federal cases to assert that DSHS may not use social security funds for current maintenance: *Philpott v. Essex County Welfare Bd.*, 409 U.S. 413, 93 S.Ct. 590, 34 L.Ed.2d 608 (1973) (holding that New Jersey may not attach social security benefits to reimburse itself for welfare benefits); *Bennett v. Arkansas*, 485 U.S. 395, 108 S.Ct. 1204, 99 L.Ed.2d 455 (1988) (holding that Arkansas may not attach federal benefits for care and maintenance of prisoners); *Brinkman v. Rahm*, 878 F.2d 263 (9th Cir.1989) (forbidding Washington State from attaching federal benefits for the care of involuntarily committed mental health patients); and *Crawford v. Gould*, 56 F.3d 1162 (9th Cir.1995) (holding that California may not deduct the costs of caring for psychiatric inpatients from a trust account to which social security payments were deposited).

These cases are readily distinguished from the DSHS practice at issue here. Critically, none of the cited federal

> The payee takes his brother to town and buys him a pair of shoes for $29. He also takes the beneficiary to see a movie which costs $3. When they return to the institution, the payee gives his brother $3 to be used at the canteen.
>
> Although the payee normally withholds only $25 a month from Social Security benefit for the beneficiary's personal needs, this month the payee deducted the above expenditures and paid the institution $10 less than he usually pays.
>
> The above expenditures represent what we would consider to be proper expenditures for current maintenance.
>
> 20 C.F.R. § 404.2040(2)(b).

cases involve the expenditure of social security benefits by a state that was designated as a representative payee. In fact, the class certified in *Brinkman* specifically excluded patients for whom the state served as representative payee. *Brinkman*, 878 F.2d at 264. As explained above, under federal regulations a representative payee has considerable authority to spend the funds entrusted to its control, provided the expenditures are for the best interests of the beneficiary. 20 C.F.R. § 416.635(a).

Thus, the issue as I see it is not whether DSHS may spend the funds for current maintenance, provided it gives priority to special needs of the foster children, but whether it may use those funds to reimburse itself for *past* maintenance or for its own administrative services, such as mileage reimbursements for social workers. The fact that DSHS in the context of reimbursing itself for *past* care of the beneficiary puts its need for reimbursement ahead of the needs of the foster children further demonstrates the fundamental conflict between its roles as representative payee and creditor.

The federal mandate to give priority to the special needs of the beneficiary directly conflicts with the express policy of DSHS to conserve the expenditure of public assistance funds on foster care and thereby lighten the burden on the taxpayer. *See* chapter 74.20 RCW (Support of Dependent Children):

> It is the responsibility of the state of Washington through the state department of social and health services to conserve the expenditure of public assistance funds, whenever possible, in order that such funds shall not be expended if there are private funds available or which can be made available by judicial process or otherwise to partially or

> completely meet the financial needs of the children of this state.

RCW 74.20.010. The state aggressively pursues this recovery policy, not only seeking money for current maintenance but also sweeping lump sum payments into the treasury to prevent a child's account from exceeding the $2,000 resource limit imposed by the SSA.

In order to provide states with an incentive to provide financial assistance to needy individuals awaiting disposition of their SSI applications, Congress provided that back payments made at the time the secretary makes the *first* payment would be exempt from the general antiattachment rule. 42 U.S.C. § 1383(g)(2). However, a recent case held that a retroactive payment after a period of denial is not the same as an initial payment and therefore does not fall under the exemption to the antiattachment rule that is found in 42 U.S.C. § 1383(g)(2). *Catarine v. Wing*, 710 N.Y.S.2d 569, 274 A.D.2d 310 (2000). *Accord Conaway v. Soc. Servs. Admin.*, 298 Md. 639, 471 A.2d 1058 (1984) (holding that the use of conserved social security benefits to reimburse the cost of past foster care is prohibited). Thus, the lump sums that DSHS "sweeps" into the treasury to reimburse the state for past foster care expenses cannot fall under the initial payment exception. There is no other exception which would validate DSHS's action.

This sweeping of lump sums not only is unauthorized under any exception to § 407(a), but also often constitutes double reimbursement. The sums "swept" to the treasury frequently reimburse the state for amounts already paid by the federal government under Temporary Assistance for Needy Families or paid by parental support. DSHS apparently keeps no accurate record to allow tracing of the "swept" sums.

Under § 407(a), rights to future payments are not transferable or assignable.

> The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

42 U.S.C. § 407(a). DSHS receives the payments not on its own behalf, but on behalf of the beneficiaries, and is not permitted to assign pending (i.e., future) payments to the reimbursement of its expenditures on behalf of the foster children. Where an agency puts reimbursement to itself ahead of the best interests of the child, ignoring the policy expressed in the federal regulations to prioritize the child's special needs, it effectively transfers the payments to its own use. This transfer from the state in its role as representative payee to the state in its role as guardian of the public purse is contrary to § 407(a). Where the agency pursues that policy to the extent of double reimbursement, the conflict of interest is egregious.

To the extent that RCW 74.20A.010 encourages the state to "sweep" a child's benefits into the treasury to repay past-due foster care, I agree with the majority that the statute is incompatible with § 405(j), which forbids any "substantial conflict of interest" between the payee. U.S.C. § 405(j)(2)(C)(iv)(II). *See also* 42 U.S.C. § 405(j)(1)(A) (mandating removal of a representative payee if the commissioner or a court of competent jurisdiction later determines that it has misused any individual's benefit.) It is also incompatible with § 407(a), which prevents transfer of

the benefits. Under the Supremacy Clause of the United States Constitution, federal law takes precedence. Thus, any use of social security funds for purposes other than current care and maintenance is unlawful, as is giving priority to maintenance over the children's special needs.

Remedies

I agree with the majority that in relying on RCW 74.20A.010, DSHS has given preference to the interests of the taxpayer over the special needs of foster children and has acted as creditor by reimbursing itself for past payment of foster care, directly contrary to § § 405(j) and 407(a) of the Social Security Act. But for reasons already set forth in this opinion, I would remand this matter to the trial court with directions to modify the injunction to prevent DSHS from using social security payments to reimburse the costs of *past due* foster care *or other expenses not directly related to current maintenance, and to require DSHS give special needs a higher priority than current maintenance.* On remand, the trial court should order DSHS to produce an accounting of social security fund disbursements for all children that had been in the custody of DSHS for the purpose of receiving foster care, establish restitution of social security funds used to reimburse DSHS for *past due* foster care expenses, *other expenses not directly related to current maintenance, and unmet special needs,* and determine appropriate attorney fees.

I thus respectfully concur in part and dissent in part from the majority opinion.

IRELAND, J., and GUY, J.P.T., concur.

THE SUPREME COURT OF WASHINGTON

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, Guardian, and other persons similarly situated, Respondents, v. STATE OF WASHINGTON DEPARTMENT OF SOCIAL AND HEALTH SERVICES, LYLE QUASIM, Director of the Department of Social and Health Services, et al., Appellants.	No. 67680-1 ORDER DENYING MOTION FOR RECONSIDERATION

The Court having considered the Appellants' Motion for Reconsideration;

Now, therefore, it is hereby

ORDERED:

That the Appellants' Motion for Reconsideration is denied.

DATED at Olympia, Washington this 14th day of December 2001.

//s//
Chief Justice Gerry L. Alexander

I have affixed the seal of the Supreme Court of the State of Washington and filed this Mandate this 14th day of December 2001

//s//
C.J. MERRITT
Clerk of the Supreme Court, State of Washington

cc: Debra Casparian
Lawrence Lockwood
Rodney Reinbold
Deborah Kant
Colette Matzzie
William Collins
Richard Price
Eugene Studer
William Kanter
Reporter of Decisions

THE SUPREME COURT OF WASHINGTON

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, Guardian, and other persons similarly situated, Respondents, v. STATE OF WASHINGTON DEPARTMENT OF SOCIAL AND HEALTH SERVICES, LYLE QUASIM, Director of the Department of Social and Health Services, et al., Appellants.	MANDATE NO. 67680-1 Okanogan County No. 96-2-00157-2

THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington in and for Okanogan County.

This is to certify that the opinion of the Supreme Court of the State of Washington filed on October 11, 2001, became the decision terminating review of this Court in the above entitled cause on December 14, 2001. This cause is mandated to the superior court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

Pursuant to Rule of Appellate Procedure 14.3, costs are taxed as follows: No cost bills having been timely filed costs are deemed waived. Order Denying Motion for Reconsideration was entered here in [sic] on December 14, 2001. Copy attached.

THE SUPREME COURT OF WASHINGTON

GUARDIANSHIP ESTATE OF DANNY KEFFELER, Respondent, by WANDA PIERCE, Guardian, and other persons similarly situated, v. STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES, et al., Appellants.	No. 67680-1 ORDER ON REMAND

Oral argument was heard in the above reference case on June 24, 1999. The Court having considered the above case;

Now, therefore, it is

ORDERED:

The case is remanded pursuant to RAP 9.11 to the trial court for the record to be supplemented as follows:

1. The State should submit the August 1998 audit by the Social Security Administration of the Department of Social and Health Services referred to at page seven of the amicus curiae brief of the Commissioner of the United States Social Security Administration.

2. The parties should submit the following information and the trial court make findings of fact on the following:

a. The current number of foster care children in the State's custody pursuant to chapter 74.13 RCW.

b. The number of such children who are also beneficiaries of any Social Security payments, identifying the specific program under which the payments are made.

c. The number of children identified in paragraph b for whom the State is the representative payee pursuant to the provisions of 42 U.S.C.A. § 405(j) (1998).

d. A detailed explanation of how the State processes and uses Social Security payments it receives as the representative payee of foster care children, to include the following information:

   i. Whether the State maintains individual accounts for foster care children;

   ii. How the State administers those accounts with respect to the $2,000 limit on accumulation of Title XVI Social Security payments;

   iii. Whether and how Social Security payments to the State receives as representative payee are "passed through" to the foster parents of the beneficiary children.

e. A detailed explanation of the services the State performs on behalf of foster care children in its capacity as representative payee.

f. The number of class members and how far back in time their claims extend.

The parties may make any additional arguments and submit additional evidence to assist the trial court in its determination.

The trial court is directed to expedite the hearing of this matter and return its findings of fact to this Court as soon as practical.

DATED at Olympia, Washington this 2nd day of December, 1999.

//s// [Richard P. Guy]
CHIEF JUSTICE

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE
COUNTY OF OKANOGAN

GUARDIANSHIP ESTATE OF DANNY KEFFELER, by WANDA PIERCE, Guardian, and other persons similarly situated, Plaintiffs, v. STATE OF WASHINGTON DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Defendant, And LYLE QUASIM, DIRECTOR OF THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES; AND MICHAEL R. HOBBS, PROGRAM MANAGER FOR DEPARTMENT OF SOCIAL AND HEALTH SERVICE, Additional Defendants.	No. 96-2-00157-2 SUPREME COURT NO. 67680-1 COURT'S FINDINGS OF FACT ON ORDER OF REMAND FROM SUPREME COURT

THIS matter came before this court pursuant to the Order on Remand issued by the Supreme Court pursuant to RAP 9.11 on December 2, 1999. The order on Remand directs this court to make findings of fact on the following:

a. The current number of foster care children in the State's custody pursuant to chapter 74.13. RCW.

b. The number of such children who are also beneficiaries of any Social Security Payments, Identifying the specific program under which the payments are made.

c. The number of children identified in paragraph b for whom the State is the representative payee pursuant to provisions of 42 USCA § 405(j) (1998).

d. A detailed explanation of how the State processes and uses social security payments it receives as the representative payee of foster children, to include the following information

i. Whether the State maintains individual accounts for foster care children;

ii. How the State administers those accounts with respect to the $2,000 limit on accumulation of title XVI Social Security Payments;

iii. Whether and how Social Security Payments the State receives as representative payee are "passed through" to the foster parents of the beneficiary children.

(e) A detailed explanation of the services the State performs on behalf of foster care children in its capacity as representative payee.

(f) The number of class members and how far back in time their claims extend.

After reviewing the affidavits, depositions, and the exhibits filed herein and having considered counsel's arguments, the court makes the following findings of fact in response to the questions posed in the Order on Remand.

Paragraph 1 of the Supreme Court's Order on Remand.

1. The 1998 audit conducted by the Social Security Administration of the Department of Social and Health Services referred to at p. 7 of the Amicus Curiae Brief of the Commissioner of the United States Social Security Administration is attached hereto as Exhibit A and herein incorporated as if fully set forth.

Paragraph 2(a) of the Supreme Court's Order on Remand.

2. The Department has historically observed a time lag when extracting this type of data from the Children's Administration's automated information system (Case Management Information System or CAMIS). The Department believes monthly data more accurately reflects the number of children in the custody of DSHS in out-of-home placement than either a specific date or a yearly average. Thus, the Department reported the number of foster children in the state's custody in September 1999 as the most recent reliable data available as of January 15th, when the information was provided to the trial court. Affidavit of Tamara Erickson, p. 3, para. 5.

3. In September 1999, there were 10,578 foster children in the state's custody pursuant to RCW 74.13. Affidavit of Tamara Erickson, p. 3, para. 4.

4. In September 1999, there were an additional 2,352 foster children for whom the Children's Administration may be responsible for providing the funding for maintenance and care but who were in the custody of a private child-placing agency, tribe or tribal child-placing agency, or other organization. Affidavit of Tamara Erickson, p. 3, para. 4.

5. Additionally, another 567 individuals under the age of 21 receive services from the Department of Social and Health Services (DSHS), Division of Developmental Disabilities, under RCW 74.13.350. Of these individuals, 303 of them receive either SSA or SSI. These individuals are in the legal custody of their birth/adoptive parents, have a guardian, or may be emancipated. Affidavit of Linda Gil, p. 2, para. 3; Linda Gil Deposition, p. 50, ll. 5-7.

Paragraph 2(b) of the Supreme Court's Order on Remand.

6. In September 1999, there were approximately 1,480 children in foster care who were receiving social security benefits. Affidavit of Tamara Erickson, p. 4, para. 6.

7. Approximately 923 of the 1,480 children in foster care in September 1999 received SSI benefits under Title XVI of the Social Security Act. Approximately 469 received SSA benefits under Title II of the Social Security Act, and approximately 88 received both SSA and SSI benefits concurrently. Affidavit of Tamara Erickson, p. 4, para. 6.

Paragraph 2(c) of the Supreme Court's Order on Remand.

8. In September 1999, the number of children in the State's custody pursuant to chapter 74.13 RCW, and for whom the Secretary of DSHS is the representative payee pursuant to provisions of 42 USCA § 405(j) (1998) was 1,411. Affidavit of Karen Kegley Justinen, p. 2, para. 3.

9. Of these 1,411 children for whom DSHS serves as representative payee, approximately 1,325 of them are in foster care with the Children's Administration. The remaining 86 children are placed by the Division of Developmental Disabilities (DDD). Affidavit of Karen Kegley Justinen, p. 2, para. 3.

10. At the present time, the Cash Accounting Unit receives $700,000 to $800,000 a month in SSI and SSA funds. Approximately $505 per child and $520 per child is received for two different SSI payments and approximately $250 per child, on the average, is received in SSA payments. Karen Kegley Justinen Deposition, p. 70, ll. 13-25; p. 71, ll. 1-8.

11. DSHS has forecasted receipt of $6,733,000 in SSI/SSA revenue for the year 2000 for children in foster care. See the Budget Forecasting Document from the Tamara Erickson Deposition, attached hereto as Exhibit B.

Paragraph 2(d) of the Supreme Court's Order on Remand.

12. Whenever a child in State foster care is entitled to receive SSI or SSA benefit payments, the State applies to the Social Security Administration to become the representative

payee except for developmentally disabled children since July 1988. Affidavit of Tamara Erickson, pp. 4-5, para. 8.

13. Title XVI (SSI) benefits are based on a child's disability. Title II (SSA) benefits are based on a death or disability of a parent who contributed to the Social Security program. Affidavit of Karen Kegley Justinen, p. 2, para. 4.

14. The accounting for the way in which the state processes and uses social security payments received by the Secretary of DSHS on behalf of foster children in the custody of DSHS, when the Secretary is their representative payee, is done by the DSHS, Office of Accounting Services, Trust Fund Unit. The Trust Fund Unit is also responsible for the accounting of other monies received on behalf of children in the care of DSHS, including Veterans Administration and Railroad Retirement benefits, and Excess Child Support Payments. Affidavit of Karen Kegley Justinen, p. 2, para. 2.

15. The Trust Fund Unit is not part of the DSHS Children's Administration, which is responsible for child protective, child welfare, family reconciliation and licensing services in Washington State. Karen Kegley Justinen Deposition, p. 8. The Children's Administration is responsible for foster care services for those children who cannot remain in their own home as a result of abuse or neglect. Affidavit of Tamara Erickson, p. 2, para. 1.

16. Karen Kegley Justinen oversees the Trust Fund Unit, which records Title II (SSA) and Title XVI (SSI) benefit payments received by the Cash Accounting Unit, on behalf of the foster children, and maintains an individual "subsidiary account" for each child receiving these benefits. Affidavit of Karen Kegley Justinen, pp. 2-3, paras. 4-5.

17. Every month, the Department receives SSI and SSA payments on behalf of foster children in the custody of DSHS, and for whom the Secretary is their representative payee, and except for "retroactive SSI payments," deposits these funds in a Foster Care Trust Fund Account at the State Treasurer's Office. Affidavit of Karen Kegley Justinen, p. 3, para. 4. Karen Justinen Deposition, p. 9, ll. 6-15.

18. Retroactive SSI payments are lump sum payments of over six times the monthly benefit amount. Since October of 1996, these lump sum retroactive SSI payments have been subject to different rules and are accounted for differently. They are deposited by the Social Security Administration directly to a dedicated interest-bearing account at a local bank. Payments deposited to this dedicated account, and the interest earned, are credited to the individual child's individual subsidiary account maintained by the Trust Fund Unit. Since October of 1996, regulations prohibit use of funds from the dedicated accounts to provide for basic foster care services. The funds can only be used for permitted expenditures of special needs, primarily related to the child's impairment. Affidavit of Karen Kegley Justinen, p. 3, para. 6.

18.1 The Department has not established how many children have dedicated accounts. It is possible this information was not requested or ordered produced by the court. The record does not show how many dedicated accounts there are, however, the Department has produced samples of two such dedicated accounts. None of the 50 random accountings include dedicated accounts. This information is not included in the accounting provided.

18.2 Prior to October of 1996, a different procedure regarding SSI lump sum payments appears to have been followed. An example of this is provided in the accounting for Jasmine Cotton, where it appears that a lump sum

payment of the amount of $11,676 was received on May 8, 1996 and on June 2, 1996 the Children's Administration was reimbursed a total amount of $11,696.00 for past foster care expenses from April of 1994 through April of 1996. There is no evidence to contradict the finding that this was the ordinary procedure followed prior to October of 1996.

19. The Trust Fund Unit has provided a summary page for each of the 50 children's accounts provided pursuant to court order. The summary page lists six separate categories as follows:

"Payments Received"	Amount of SSI/SSA or both received.
"Interest Earned"	Interest earned from money held in trust.
"Payments Returned"	Amount of Money Returned to the Social Security Administration
"Account Disbursements"	SSA and or SSI Monies Spent Directly for the Benefit of the Child for Items Other Than Basic Foster Maintenance Such as Clothing, Toys, Computers, Summer Camps, Medical/Dental Expenses, Educational Expenses, etc. (See Summary Social Security Accounting Cover Pages for Thomas Bakkon and Danetta Hutchinson, copies of which are attached hereto and herein incorporated as if fully set forth as Appendix "7")

"Foster Care Reimbursements"	Amount authorized by Trust Fund Unit to be paid from the Children's Administration Trust Fund Account.
"Balance"	Balance in the child's trust fund account.

(See Summary Social Security Accounting Cover Pages for Thomas Bakkon and Danetta Hutchinson, copies of which are attached hereto and herein incorporated as if fully set forth in Exhibit "G".)

Paragraph 2(d)(i) of the Supreme Court's Order on Remand. (Individual Accounts)

20. The DSHS Office of Accounting Services, Trust Fund Unit, maintains an individual "subsidiary" account for each of the 1,411 children in the State's custody pursuant to chapter 74.13 RCW, and for whom the Secretary of DSHS is the representative payee pursuant to provisions of 42 USCA § 405(j) (1998). Affidavit of Karen Kegley Justinen, p. 3, paras. 4-5.

Paragraph 2(d)(iii) of the Supreme Court's Order on Remand. (Pass Through)

(Note, paragraph 2d(iii) of the Order on Remand is addressed prior to paragraph 2d(ii) for better continuity.)

21 The source of the funds available to the Children's Administration for foster care includes Federal and State match Title IV-E funds, TANF, SSI, SSA monies, and parental child support.

22. In developing the amount of the State's funds needed to make up the balance of the total foster care budget the State includes as part of its revenue resources, SSA and SSI payments anticipated to be received by DSHS as representative payee. Tamara Erickson Deposition, p. 41, ll. 14-25, p. 42, p. 43, l. 4. See the Budget Forecasting Document from the Tamara Erickson Deposition, attached hereto as Exhibit B.

23. The State's inclusion of anticipated SSA and SSI children benefit payments in the State budget reduces the amount of money that the legislature is required to appropriate to meet the State's foster care expenditure responsibilities. Tamara Erickson Deposition, p. 42, ll. 18-25, p. 43, ll. 1-4.

24. The term "pass through" in the context of SSI and SSA benefits is not one that is used by the DSHS Trust Fund Unit. Karen Kegley Justinen Deposition, p 17, l. 25; p. 18, ll. 1-8.

25. The Children's Administration does not normally directly purchase the food, clothing and shelter that a child in foster care needs. Rather, such items are generally purchased and provided to a foster child by a foster parent. The Children's Administration pays foster parents a base amount from a pre-existing schedule. See the Family Foster Care Rates schedule, attached as Exhibit C and by this reference is incorporated herein. The special needs and exceptional costs may be provided if funds are available.

26. Where a special need or extra item is authorized, the Trust Fund Unit will issue a check drawn from a child's subsidiary account where SSI and SSA benefits were deposited to issue a payment directly to a foster parent, store, or other service provider. Such expenditures are authorized

under the discretion of the representative payee who considers the extent that it benefits the client among other considerations.

27. The Trust Fund Unit typically uses a child's social security payments to pay for a child's basic foster care expenses. Every month the Children's Administration generates a report that shows for each child in foster care the amount of money paid by the Children's Administration to the care provider for the cost of that care. The Trust Fund Unit reviews the report and compares it to the child's trust fund account to determine the amount to be reimbursed for the child's foster care. Affidavit of Karen Kegley Justinen, p. 4, para. 8.

28. Each month the Trust Fund Unit accesses Children's Administration's computer generated list of "reimbursable foster care expenses" in order to determine how much of the children's SSI and SSA funds it will direct the State Treasurer to pay to Children's Administration.

29. In general, if the amount in the trust fund account is adequate to reimburse the entire cost of the foster care, as claimed by Children's Administration, the entire claimed amount is paid. If the funds in the trust fund account are not adequate to reimburse the entire cost of the foster care, the Trust Fund Unit uses up to the amount available in the trust fund account. The amount to be paid for foster care is transferred from the Trust Fund Unit's Foster Care Trust Fund Account to the Children's Administration. Affidavit of Karen Kegley Justinen, p. 4, para. 8.

30. The representative payee has the option to authorize expenditure of all of the SSA and or SSI benefit payments it receives on items other than current foster care maintenance.

Karen Kegley Justinen Deposition, p. 76, ll. 14-25, p. 77, ll. 1-4.

31. The Trust Fund Unit has the authority to disburse from a child's trust fund account monies for "extra items and special needs" for the "direct benefit" of the child. Affidavit of Karen Kegley Justinen, p. 4, para. 9; Trust Fund Handbook Section 3, Account Disbursements.

32. This discretion goes so far as to allow all of the child's trust funds to be expended for extra items and special needs with nothing to be paid to Children's Administration for "reimbursement." Karen Kegley Justinen Deposition, p. 18, ll. 9-25, p. 26, ll. 3-25, p. 27, ll. 1-2, p. 39, ll. 11-17, p. 76, ll. 14-25, p. 77, ll. 1-4.

33. "Direct benefit" is the standard by which the representative payee is to judge approval of any disbursement requests. Karen Kegley Justinen Deposition, p.. 76, ll. 14-15.

34. Children's Administration staff can request that a child's Social Security payment(s) be used for the child's extra items or special needs instead of for basic foster care costs. Children's Administration staff can also request that a child's Social Security payments be conserved. Conservation can be employed for a time period prior to their emancipation to allow a child to have funds available when they transition to living independently, or for further education or other approved purposes for the direct benefit of the child. Affidavit of Karen Kegley Justinen, pp. 4- 5, paras. 9-10.

35. Upon request from the Children's Administration worker, funds may be disbursed from a child's trust fund account for both extra items and special needs of the child, subject to Trust Fund Unit approval. Examples of the most common disbursements are for computers, educational

expenses, summer camp, counseling, toys, clothing, athletic equipment, orthodontics, etc. Affidavit of Karen Kegley Justinen, pp. 4-5, paras. 9-10.

36. Examples of extra items or special needs which the Trust Fund Unit recognized as appropriate expenditure of SSI and SSA funds are computers, educational expenses, summer camp, counseling, toys, clothing, athletic equipment, orthodontics, etc. Affidavit of Karen Kegley Justinen, p. 4, para. 9.

37. The Department of Social and Health Services, Office of Accounting Services, Trust Fund Handbook, Section 3 provides, in part, as follows:

> USE OF FUNDS: Funds can be used for any goods or services that directly benefit the client. Examples include clothing, toys, computer, summer camp, medical/dental expenses (not covered by medical coupons), educational expenses, etc. (our emphasis) (Trust Fund Handbook Section 3.) (Karen Kegley Justinen Deposition, Exhibit 5, Section 3.)

38. The Secretary of DSHS is the representative payee. The record does not establish that the Secretary or anyone else has issued separate written instructions or guidelines establishing when and if special needs, extra items and savings should be requested or approved. Affidavit of Karen Kegley Justinen, p. 2, paras. 1-2; Karen Kegley Justinen Deposition, p. 48, ll. 12-25; p. 49, ll. 1-11.

39. The head of the Trust Fund Unit is unaware of what the caseworkers in the field are told or what information they are provided regarding when to request special items. Karen Kegley Justinen Deposition, p. 80, ll. 9-25, p. 81, ll. 1-4.

40. There is no evidence that the child or the foster care provider are provided information about the availability of the SSI and SSA payments to be expended, in their entirety if deemed in the best interest of the child, for extra items and special needs directly benefiting the child. As a result, some eligible children probably fail to request extra items for special needs.

41. There is no evidence that the representative payee makes any regular, systematic or uniform attempt, on a monthly basis or otherwise, to determine what "extra items" and/or "special needs" would directly benefit the children in State foster care before applying the SSA and SSI funds, in his control, to reimburse Children's Administration. Karen Kegley Justinen Deposition, p. 75, ll. 24-25, p. 76, ll. 1-11.

42. Of the 48 randomly selected individual trust fund accounts reviewed by plaintiff's counsel, 35 (or 73%) received SSI benefit payments, 11 (or 23%) received SSA benefit payments and 2 or 4% received both SSA and SSI.

43. Of the 35 children entitled to SSI benefits, the total amount of money received by the State was $596,378. The total amount used by the Trust Fund Unit to fund the State's foster care budget was $501,556 (or 84%). The total amount spent to directly benefit the child for extra items and special needs "account disbursements", was $19,534 (or 3%). See Plaintiff's Summary of Payments for 48 Random Cases, attached as Exhibit D.

44. Of the 11 children entitled to SSA benefits, the total amount of money received by the State was $98,152. The total amount used by the Trust Fund Unit to fund the State's foster care budget was $73,755 (or 75%). The total amount spent to directly benefit the child for extra items and special needs, "account disbursements," was $4,180 (or 5%).

45. Of the two children entitled to combined SSA and SSI benefits, the total amount of money received by the State was $91,422. The total amount used by the Trust Fund Unit to fund the State's foster care budget was $87,586 (or 95%). The total amount spent to directly benefit the child for extra items and special needs, "account disbursements," was $0 (0%).

46. Of all 48 accounts combined, the State received $785,952 in SSA and or SSI benefit funds on behalf of the children. To fund the State's foster care budget, the State reimbursed itself $662,897 (or 84%) from these same funds.

47. Of the 48 children for whom accounts were randomly selected, ten received "extra items and or special need" expenditures. This amounted to $23,714 (or 3%) of the total $785,952 in benefit payments received by the State.

48. The 48 random accounts show 3 of the 30 males received "account disbursements." Eleven of 18 females received $35,659 in "account disbursements."

49. The record does not fully explain why special benefits by way of "account disbursements" are not sought for some children.

50. Children in state foster care whose SSA and SSI benefits are paid to a representative payee other than the Secretary of DSHS can still receive state supported foster care maintenance. Tamara Erickson Deposition, p. 36, p. 37, ll. 1-8.

51. Foster children who do not receive any SSI or SSA benefits may qualify for extra items and special needs from

the total Foster Care Budget if funds are available. Tamara Erickson Deposition, p. 51, ll. 3-19.

52. The record does not establish the extent to which foster children who were not on SSI or SSA receive special need payments or extra item payments.

53. The Department's process for making a disbursement from SSI or SSA benefits for extra items or special needs starts when a Foster Parent and/or Children's Administration staff determine a child needs extra items or has any special needs. If so, Children's Administration staff submit a request for disbursement of funds to the Trust Fund Unit. Trust Fund staff review the request and if approved and the child has available funds, the Trust Fund Unit disburses the funds. Usually, a warrant is sent to the foster care provider made payable to a store or other service provider. However, occasionally warrants for extra items or special services are sent directly to the store or other service provider. If the staff is uncertain whether the request is an appropriate use of social security funds, the staff will consult with the Social Security Administration for approval. Affidavit of Karen Kegley Justinen, pp. 4-5, paras. 9-10. The record does not establish the existence of specific standards which direct foster parents or caseworkers when to apply for special needs or extra items.

54. Reimbursement is used by the Department to mean that it must expend the money up-front. The Department cannot claim federal funds back until the expenditure has already been made. In that sense, it is a reimbursement process, but only in the accounting sense.

55. Social Security Funds that are accounted for by the Trust Fund Unit and are not used for basic foster care costs, extra items, or special needs, are deposited into a collective

interest bearing savings account at a local bank. It is the policy of the Trust Fund Unit that the interest earned from this collective account is to be credited to each child's individual trust fund account on a monthly basis. These funds are ultimately forwarded to the child's successor payee, or paid directly to the child if emancipated. Affidavit of Karen Kegley Justinen, pp. 6-7, paras. 13-17.

Paragraph 2(d)(ii) of the Supreme Court's Order on Remand. ($2000. Limit)

56. A child receiving SSI benefits cannot have available resources over $2,000 and remain eligible for the monthly SSI benefit. (Funds deposited to the Dedicated Account are exempt from the $2,000 resource limit.) The Children's Administration maintains that it is its policy to ensure a child's trust fund account balance remains below the resource limit by reviewing every SSI account each month by Trust Fund staff to determine if the balance is approaching the resource limit. If the balance is nearing the resource limit, the Trust Fund Unit contacts Children's Administration staff notifying them of the need to spend down the child's account balance. The Children's Administration staff assess what special needs of the child could be met using the excess funds and request disbursement of funds from the Trust Fund Unit. If the request is an appropriate use of the child's Social Security benefits, the Trust Fund Unit disburses the funds. Affidavit of Karen Kegley Justinen, p. 5, para. 12; Affidavit of Tamara Erickson, p. 5, para. 10. Prior to October 1996, some accounts were spent down by reimbursing Children's Administration for previous basic care expenditures. None of the 48 randomly selected accounts demonstrated the spending down procedure after October 1996.

57. The State pays SSI payments to reimburse the Children's Administration as reimbursement for

reimbursable foster care expenses as a means of not exceeding the $2000 accumulation ceiling. Karen Kegley Justinen Deposition, p. 41, ll. 20-25; p. 42, ll. 1-18.

58. "Account sweeping" sometimes results in taking all the Social Security funds, which have accumulated to that date, and applying them to all of the State's accumulated reimbursable foster care expenses. For examples of "account sweeping" see accounts of Nacole Blimka, Case No. 4; Clark Casey, Case No. 9; Jasmine Cotton, Case No. 11; Jennifer Filbeck, Case No. 15; Clayton Gemoyla, Case No. 17; Rachel Hernandez, Case No. 21; Christopher Mulkins, Case No. 34; and others discussed in Plaintiffs' Narrative Summary of 48 Random Accounts. See Plaintiff's Narrative Summary of 48 Random Cases, attached as Exhibit E.

Paragraph 2(e) of the Supreme Court's Order on Remand.

59. Prior to applying to the Social Security Administration to serve as representative payee, the Children's Administration identifies all children in the foster care system who may have a significant mental or physical impairment that would make them eligible for SSI benefits. The Children's Administration also must apply on behalf of any child who is eligible for SSA benefits as required by 20 CFR 416.210. If Children's Administration staff believe the child may be eligible for SSI, the staff submits an application to the Social Security Administration. If Children's Administration staff believe a denial of eligibility is erroneous, they will appeal on behalf of the child. Affidavit of Tamara Erickson, pp. 4 and 5, para. 8.

60. The Children's Administration provides a number of services to all foster children regardless of whether they receive Social Security. Children's Administration staff are

responsible for monitoring a child's service needs, including food, clothing, shelter, therapy, child care (specialized or regular), special dietary needs, any special equipment the foster parent may need to care for the child, or any other special needs the child has through the child's case plan. Children's Administration is required to do an Individual Service and Safety plan for each child in foster care. This plan addresses the child's needs and where the child should live. This plan also addresses the child's permanent placement (either returning home to their parents (reunification) or another plan such as adoption or guardianship if reunification is not possible) and what the parents must do in order to achieve reunification. Affidavit of Tamara Erickson, p. 5, para. 9.

61. Children's Administration staff, along with Trust Fund Unit staff, are also responsible for maintaining the child's eligibility for SSI benefits by monitoring the amount of benefits available on a child's behalf. If resources are available beyond the monthly cost of foster care, staff may identify additional service needs and will purchase those services for the child. Affidavit of Tamara Erickson, p. 5, para. 10; Affidavit of Karen Kegley Justinen, p. 5, para. 12.

62. If the child's social worker identifies additional services or needs beyond basic food, clothing, and shelter, the social worker may recommend that the child's monthly social security benefits be used to pay for those needs or services in addition to, or instead of, basic foster care maintenance. The DSHS will give priority to the special needs when it is consistent with the social security regulations and when it is in the child's best interest. Affidavit of Tamara Erickson, p. 5, para. 11.

63. SSI financial redeterminations are completed by Children's Administration staff who interview the social

worker, child, foster parent, and/or guardian. Financial redeterminations are required by the Social Security Administration to determine continued income eligibility. There are several different types of redetermination forms used by the Social Security Administration depending on whether or not the child is flagged by the Social Security Administration as likely to have changes to their record, such as frequent moves and wages or other sources of income. Affidavit of Tamara Erickson, pp. 5 and 6, para. 12.

64. Children who receive SSI benefits are required by the Social Security Administration to have completed Continuing Disability Reviews (CDR). Children's Administration staff complete CDRs approximately every three years and then again just before the child turns 18. If a CDR is not completed, the child's SSI benefits are terminated by the Social Security Administration. Affidavit of Tamara Erickson, p. 6, para. 13.

65. Children's Administration staff report to the Social Security Administration any changes to the child's income that will affect the SSI payment amount or continuing SSI eligibility (i.e., wages, child support payments, etc.). For example, Children's Administration receives a list from the DSHS, Division of Child Support, which match children receiving an SSI benefit with those for whom the Division of Child Support received a child support payment. The Children's Administration has the obligation to report these child support collections to the Social Security Administration as income, which could lower the child's SSI benefits (not dollar for dollar). In the past, Children's Administration has not filed such reports. Staff also notify the Social Security Administration regarding changes in the circumstances of the child (change of address, change in custody, on the run, etc.).

66. Children's Administration staff complete the reports and forms required by the Social Security Administration for SSA benefits. For example, staff prepare Beneficiary Recontact Reports which track beneficiaries' marital status, and student statement forms which track school attendance for continued eligibility. Affidavit of Tamara Erickson, p. 6, para. 15.

67. Children's Administration staff also complete Disabled Adult Child (DAC) claims for those children receiving both SSA and SSI benefits or children receiving SSA who may be eligible for SSI. The Disabled Adult Child program allows a child, under certain circumstances, to receive benefits under SSA beyond their 18th birthday. Affidavit of Tamara Erickson, p. 6, para. 16.

68. Children's Administration staff assist 18-year-olds, parents, adoptive parents, foster parents, and/or guardians in accessing dedicated account funds. Affidavit of Tamara Erickson, p. 7, para. 17.

69. Children's Administration staff make necessary arrangements with the new custodian or the 18-year-old to facilitate reunification or emancipation. Some children would be unable to return home or live independently without a source of income. With proper planning between staff and the child or custodian, SSI eligibility may be preserved with benefits available after the child leaves foster care. If the child is eligible for SSA, staff advises the new custodian or the 18-year-old on how to apply to the Social Security Administration to become the new representative payee. Affidavit of Tamara Erickson, p. 7, para. 18.

70. Children's Administration staff also complete adoption support screenings for SSI eligible children. Children who are eligible for SSI are also eligible for medical

benefits under COBRA (Consolidated Omnibus Budget Reconciliation Act). This service is provided because families outside of Washington State adopt some children, or the adoptive family may move to another state. COBRA allows reciprocal medical coverage in other states that may not be available otherwise. Affidavit of Tamara Erickson, p. 7, para. 19.

71. The Trust Fund Unit also monitors the amount of monthly payment received for the child to ensure the correct benefit amount is received from the Social Security Administration, and monitors the amount of dedicated installment payments deposited by the Social Security Administration directly into the child's dedicated account, to ensure the correct retroactive benefit amount is received. Affidavit of Karen Kegley Justinen, p. 6, para. 13.

72. Trust Fund Unit staff also communicate with the Social Security Administration to resolve any discrepancies regarding benefits due, overpayment amounts, etc. The Trust Fund Unit will refund, to the Social Security Administration, benefits for which the child is not entitled to. Affidavit of Karen Kegley Justinen, p. 6, para. 14.

73. The Trust Fund Unit staff also comply with strict reporting and accounting requirements. The Trust Fund Unit reports to the Social Security Administration if balances exceed the SSI resource limit of $2000; submits annual accountings for each child to the Social Security Administration (reporting on benefits received, used, and conserved); and submits additional account information to the Social Security Administration (interest earned, account balances, etc.) as requested. The Trust Fund Unit maintains complete and individual records of each child's account for auditing purposes. Affidavit of Karen Kegley Justinen, p. 6, para. 15.

74. The Trust Fund Unit forwards a child's remaining balance or unused benefits to either the Social Security Administration or the new payee when the Social Security Administration appoints a new representative payee. Affidavit of Karen Kegley Justinen, p. 6, para. 16.

Paragraph 2(f) of the Supreme Court's Order on Remand.

75. The actual number of class members is not determinable from records available to DSHS. Based on records available, there are up to 7,798 class members dating back to July of 1991. Affidavit of Karen Kegley Justinen, p. 7, para. 19.

76. According to the Trust Fund Handbook, there are approximately 2,000 children in State care with a trust fund account. The State claims its records are available back to 1991. Karen Kegley Justinen Deposition, Exhibit "5" Trust Fund Handbook, Sec. 1.

The claims of the class extend back 18 years plus one year for a total of 19 years back from the date of the filing of plaintiffs' action, i.e., to 1979.

Additional Findings of Fact to Assist the Court

77. The Department of Social and Health Services admits that its divisions fail to communicate adequately with regard to the accounting for and crediting of child support payments made on behalf of foster children who are also receiving SSA/SSI benefits. Karen Kegley Justinen Deposition, 50, ll. 23-25; p. 51, ll. 1-4; p. 54, ll. 20-25, Exhibit 3; p. 55, ll. 1-9.

78. When child support is collected, the portion denominated as "current support" is used to offset "current reimbursable foster care expenses." Child support identified as "Back Support" is used to repay accumulated reimbursable foster care expenses. The excess of current support over reimbursable foster care expenses is sent to the Trust Fund Unit as excess child support. Affidavit of Alan Rhoten, p. 3, para. 5.

79. The State's system does not report to the Foster Care Trust Fund Unit that it has used parental support to pay for all or a part of "current reimbursable foster care expenses." Alan Rhoten Deposition, p. 38, ll. 5-21.

80. In those months when child support is received from a parent of a child in state foster care who is also receiving SSA and or SSI benefit payments, the child's' trust account is not credited to the child's subsidiary" trust accounting record. Karen Kegley Justinen Deposition, p. 55, ll. 9-25; p. 57; p. 58, ll. 1-19.

81. The head of the Trust Fund Unit has known, since at least 1994, because of the failure of the Trust Fund Unit to communicate with the Division of Children's Services, that it potentially reimburses itself twice for the same months foster care expenses, once through use of the foster child's SSA and SSI money and once from parental support payments. Karen Kegley Justinen Deposition, p. 16; p. 17, ll. 1-19, Exhibit 3.

82. The State may experience a double payment when it "sweeps" the children's trust fund account to repay reimbursable foster care expenses which have accumulated from prior months where child support has already been paid. For examples of such sweeping, see accounts of Nacole Blimka, Case No. 4; Clark Casey, Case No. 9; Jasmine Cotton, Case No. 11; Jennifer Filbeck, Case No. 15; Clayton

Gemoyla, Case No. 17; Rachel Hernandez, Case No. 21; Christopher Mulkins, Case No. 34; and others discussed in Plaintiffs' Narrative Summary of 48 Random Accounts.

83. To date, the State's system has not been corrected to eliminate this potential problem for double payment.. Karen Kegley Justinen Deposition, p. 17, ll. 20-24, Exhibit 3.

84. The potential significance of this problem is highlighted by the fact that the State forecasts collecting approximately $3.25 million for FY2000 in child support for children in foster care. See the Budget Forecasting Document from the Tamara Erickson Deposition, attached hereto as Exhibit B.

85. The source of funds for the Children's Administration's total foster care budget for FY2000 is $37,407,045 State Only, $9,317,124 Title IV-E, $3,579,000 TANF, and $3,579 Title XIX. See Source of Funds for Foster Care Budget, attached as Exhibit F.

86. Most children in foster care qualify for Title IV-E and/or TANF funding while awaiting a determination of SSI/SSA benefits.

87. Following a determination of Social Security eligibility, the State representative payee will receive a lump sum payment for prior months' eligibility.

88. Under the TANF Program, federal funding is provided directly to the State to reimburse 100% of its reimbursable foster care costs. Affidavit of Tamara Erickson, pp. 31-33. Federal funding is also provided under Title IV-E to reimburse a percentage of foster care costs. Applications were made in some of the 48 random cases under both programs for children in foster care receiving SSI

and SSA. Eligibility requirements and funding availability are such that the state does not apply for federal funding for all children, neither does the state apply for federal funding for all of a child's costs. The State argues that its accounting system is such that overpayments do not occur since the federal share of foster care costs, collected from the foster child's trust fund account are passed through to the federal government. The record does not establish this point or rule it out.

89. Currently there are 567 Developmentally Disabled children or qualifying young adults in Foster Care. Three hundred three of them are entitled to receive Social Security benefits. Linda Gil Deposition, p. 13, ll. 7-12.

90. The children with developmental disabilities were transferred from the regular Foster Care Program, administered by Children's Services, into the Developmental Disabilities Foster Care Program, administered by the Department of Developmental Disabilities in July of 1998. Affidavit of Linda Gil, p. 2, para. 5.

91. The transfer involved an Interagency Agreement, which agreement contains a provision of unresolved issues by a committee, identified in the agreement. Among the unresolved issues were the responsibilities of the DSHS Trust Fund Unit.

92. DSHS served as representative payee for the Developmentally Disabled children until July 1999. Affidavit of Linda Gil, p. 2, para. 4. The Developmentally Disabled Foster Care children were thus a part of the plaintiff class when the Court entered its Order on January 5, 1996.

93. The Secretary of Washington State DSHS no longer serves as representative payee for foster children with

Developmental Disabilities. Instead, various private agencies such as the ARC of King County and the ARC of Spokane now serve as representative payee. Linda Gil Deposition, p. 30, ll. 11-13.

94. The aforesaid institutional Private Representative payees administer the Social Security benefits of the developmentally disabled foster care children by paying the benefits directly to the foster home. The State then pays any difference between the cost of foster care and the Social Security benefit. Affidavit of Linda Gil, p. 4, paras. 9-10.

95. In this way, the State's foster care payment for Developmentally Disabled Foster Children is reduced by the amount of their Social Security Benefit.

96. The State relies on the representative payee to pay all SSI payments directly to the foster home. The record does not establish that the State controls the decisions made by representative payees in disposition of SSI/SSA funds. Linda Gil Deposition, p. 32, ll. 16-20.

97. The Parents of the Developmentally Disabled Foster Children are Required to Sign a Voluntary Placement Agreement (VPA) which Provides in Part:

> Parent/Guardian Agrees:
>
> I voluntarily agree that the above named child be placed in the care and under the supervision of DSHS. I authorize DSHS to carry out the duties and responsibilities as described later in this agreement. DSHS is further authorized to apply as a Representative Payee for any benefits the child is eligible to receive, and to use the fund to cover the cost of care and services provided to the child. (Our emphasis)

98. It appears that developmentally disabled children do not have SSI or SSA funds available for "special needs", "extra items" or savings.

DATED this 30th day of May, 2000.

//s//
JUDGE JACK BURCHARD

Approved as to form only:

CHIRISTINE O. GREGOIRE
Attorney General

//s//
L. SCOTT LOCKWOOD
WSBA No. 19248
Assistant Attorney General
Attorney for Defendants

Approved for presentation by:

RODNEY M. REINBOLD
WSBA No. 4656
Co-Counsel for Plaintiffs

RICHARD B. PRICE
WSBA No. 3203
Co-Counsel for Plaintiffs

[ATTORNEY GENERAL LETTERHEAD]

December 29, 1900

The Honorable Jack Burchard
Okanogan County Superior Court
149 Third N.
P.O. Box 112
Okanogan, WA 98840-0112

RE: Keffeler v. State of Washington, DSHS, et al.
Superior Court Cause No. 92-2-00157-2
Supreme Court Cause No. 67680-1

Dear Judge Burchard:

I represent the Department of Social and Health Services in the above matter. As the court ordered in its Scheduling Order on Proceedings on Remand from Supreme Court, enclosed please find a copy of the August 1998 audit by the Social Security Administration of the Department of Social and Health Services referred to at page 7 of the amicus curiae brief of the Commissioner of the United States Social Security Administration. The Social Security Administration will be submitting a declaration in support of this audit report by January 15, 2000.

Should you have any questions, please feel free to contact me at (360) 459-6949.

Sincerely,

//s//
Debra E. Casparian

Assistant Attorney General
Social & Health Services Division
(360) 459-6949

DEC:lan
Enc.

cc: Deborah Kant, Appellate Staff, Department of Justice
Victoria Blais, General Counsel, Social Security Administration
Rodney Reinbold, Attorney at Law
Richard Price, Attorney at Law

DECLARATION OF KEVIN MCCAHILL

I, Kevin McCahill, declare as follows:

1. I am an employee of the Social Security Administration, Office of Program Benefits, Division of Representative Payment and Evaluation (DRPE).

2. I traveled with Ed Fotheringill and other DRPE central office staff members to Seattle the week of August 24, 1998 to August 28, 1998 to conduct onsite reviews of the Washington State Department of Social and Health Services (DSHS) and other organizational payees.

3. Mr. Fotheringill prepared the attached trip report on September 28, 1998.

4. Mr. Fotheringill is no longer employed at the Social Security Administration.

5. I have read Mr. Fotheringill's trip report and believe that it accurately depicts DRPE's onsite review of DSHS and the opinions DRPE formed about DSHS during the onsite review.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

//s//

Kevin McCahill
Senior Policy Analyst
Office Program Benefits
Division of Representative
Payment and Evaluation

DRPE TRIP REPORT – SEATTLE 1998

DRPE Central Office Staff traveled to Seattle the week of 8/24-8/28/98 to conduct onsite reviews of three different types of organizational payees: (1) a State mental facility (Western State Hospital); (2) the Department of Social and Health Services (DSHS); and (3) a fee-for-service organization (Safety Net Services).

The fundamental purpose of the onsite reviews was three-fold: (1) to gain a better understanding of how different kinds of organizational payees operate; (2) to determine the organizations' strengths and weaknesses in the context of payee performance; and (3) to encourage an open, responsive line of communication between the organizations and the parallel field offices.

DRPE staff was represented by Kevin McCahill, Pat Gregus, Ray Hairston, and Ed Fotheringill. Seattle RO staff was represented by Ila Andrews.

It is not the intention of this report to document, in detail, all that transpired during the field reviews. Rather, the intention is to give an over-view of some of the more noteworthy insights gained from our discussions. Detailed information will be made available upon any verbal de-briefing deemed necessary.

<u>Wednesday 8/26</u>

Onsite Review of The Department of Social and Health Services (DSHS), Olympia, WA:

The review methodology was four-fold:

1. A discussion with DSHS administrators and staff on rep payee duties and responsibilities;

2. A review of a sample of accounting records;

3. A discussion with case workers and SSI facilitaters;

4. A close-out session to discuss findings and make recommendations for corrective action.

The DSHS for the State of Washington is a model agency that could stand as a prototype for effective organizational payeeship. There is excellent communication both within and between each DSHS component, as well as between the DSHS and the parallel FO.

The foster care section provides a broad range of care and maintenance, including emergency placements, family conflict issues, child welfare services, psychological services for both children and their parents, alcohol and drug rehabilitation, etc. The key to the practical functioning of the foster care section lies in the in-tandem work process involving SSI facilitators (social workers who take the SSI applications and handle all paperwork, money transactions, and interaction with the FO) and case workers (social workers who do all of the hands-on management of foster care situations in the field). The SSI facilitators and case workers are in constant communication and actually provide a kind of check-and-balance function that is extremely effective.

The accounting system is two dimensional: (1) there is an automated record reflecting monies coming in and going out;

and (2) a paper file, held by the case worker, showing the entire paper tail for the case, including documentation of expenditures. The separation of automated and paper records makes an audit quite cumbersome, but when the files are brought together with the automated records, the system reflects accurate and responsible accounting. The only recommendation for corrective action involved the posting of interest to a few cases that had gone unrecognized.

The DSHS brought to our attention one issue that they believe impedes inter-agency work effectiveness: FO management is constantly rotating staff assignments and responsibilities, making it difficult for DSHS and SSA to have a liaison that can gain any momentum. As soon as the the [sic] interagency relationship becomes comfortable and effective, the FO manager rotates a new (and inexperienced) person into the job. The current SSA Claims Rep wants to stay in the liaison position, but is scheduled to rotate out shortly. We basically left this in Ila's hands.

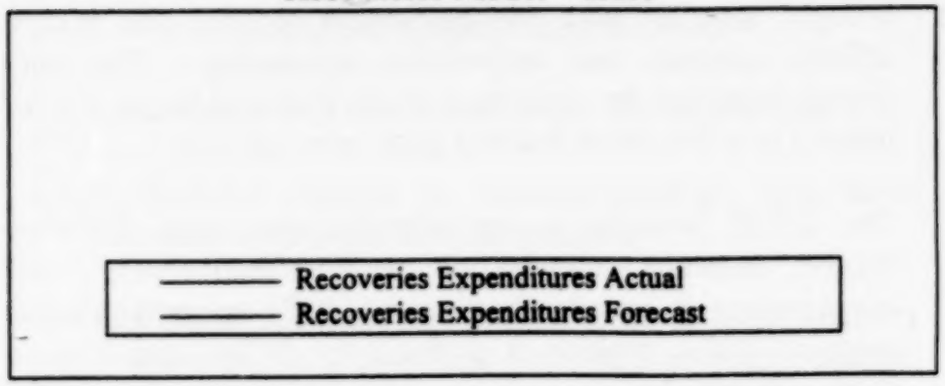
Brief meeting with Colleen St. Louis at the RO at Columbia Tower:

Ed briefed Colleen on all that transpired at DSHS. Colleen ---unreadable--- (and relieved) that the inter-agency work . . .

Exhibit B

Forecast 11/98 for 99-01 budget [handwritten]

Recoveries Model Values



Date	Recoveries	Date	Recoveries
Jul-97	-$742,357	Jul-99	-$755,835
Aug-97	-$734,409	Aug-99	-$755,164
Sep-97	-$724,047	Sep-99	-$754,493
Oct-97	-$728,563	Oct-99	-$753,822
Nov-97	-$740,867	Nov-99	-$753,152
Dec-97	-$738,170	Dec-99	-$752,481
Jan-98	-$749,654	Jan-00	-$751,810
Feb-98	-$752,263	Feb-00	-$751,140
Mar-98	-$758,971	Mar-00	-$750,469
Apr-98	-$760,149	Apr-00	-$749,798
May-98	-$765,224	May-00	-$749,128
Jun-98	-$764,554	Jun-00	-$748,457
Jul-98	-$763,883	Jul-00	-$747,786
Aug-98	-$763,212	Aug-00	-$747,116
Sep-98	-$762,542	Sep-00	-$746,445
Oct-98	-$761,871	Oct-00	-$745,774
Nov-98	-$761,200	Nov-00	-$745,103
Dec-98	-$760,529	Dec-00	-$744,433

Exhibit B

Jan-99	-$759,859	Jan-01	-$743,762
Feb-99	-$759,188	Feb-01	-$743,091
Mar-99	-$758,517	Mar-01	-$742,421
Apr-99	-$757,847	Apr-01	-$741,750
May-99	-$757,176	May-01	-$741,079
Jun-99	-$756,505	Jun-01	-$740,409

FY 98	-$8,959,228	FY 00	-$9,025,749
FY 99	-$9,122,329	FY 01	-$8,929,169

97-99 Bi.	-18,081,557	99-01 Bi.	-17,954,918

Exhibit B

RM 1000.xls
This shows how foster care is spread to programs by the forecast.
The allotment distribution of foster care by month is shown on pages 15 and 16.

Regions Allotment FY00		Allotment	Balance	Region 1	Region 2
Family Foster Care	A1910	51,614,991	51,614,991	6,593,302	5,728,994
Personal Care	A1920	1,302,292	1,302,292	174,096	151,274
Group Care	A193x, 4x, 9x	42,777,015	42,777,015	5,718,610	4,968,964
Staff Secure GH	A1996	1,050,600	1,050,600	140,449	122,037
Receiving Homes	A1950	4,331,660	4,331,660	579,075	503,164
Misc. FC					
Employ. FPCC	A1964	8,606,758	8,606,758	1,150,587	999,768
FH Recruit.	A1965	447 000	447,000	26,068	22,651
FC Liaisons	A1966	252,000	252,000	0	0
Passport Prog.	A1967	2,052,240	2,052,240	268,005	234,327
Intensive FC Assess	A1968	1,604,000	1,604,000		
Adopt Home Study	A1969	0	0		
FP Suprv.Visit	A1971	1,145,154	1,145,154	150,588	131,006
FP Training	A1972	1,190,690	1,190,690		
Reimburs.	A1973	467,392	467,392		
FP Supp.–DLR	A1976	100,000	100,000		
Other Services	A1961-78	14,112,257	14,112,257	1,864,486	1,618,461
Total Misc.	A1960-70	29,977,491	29,977,491	3,459,734	3,006,203
FC Recoveries					
Support Enfor.	A1981-2	(3,250,890)	(3,250,890)	0	0
SSI/SSA	A1983	(6,733,676)	(6,733,676)	(900,185)	(782,182)
Total Recov.	A1980	(9,984,566)	(9,984,566)	(900,185)	(782,182)

Exhibit B

Region 3	Region 4	Region 5	Region 6	HQ	
7,228,942	13,788,037	7,445,418	8,535,298	2,295,000	
190,880	364,072	196,598	225,374	0	
6,269,923	11,958,864	6,457,681	7,402,973	0	
153,989	293,709	158,600	181,816	0	
634,901	1,210,971	653,914	749,635	0	
1,261,512	2,406,130	1,299,289	1,489,482	0	
28,582	54,515	29,437	33,747	252,000	
0	0	0	0	252,000	
308,739	500,920	340,601	363,994	35,654	
				1,604,000	
176,697	301,290	185,057	200,518	0	
				1,190,690	1,190,690
				467,392	467,392
				100,000	
2,017,747	3,972,208	2,052,486	2,391,029	195,840	
3,793,277	7,235,063	3,906,870	4,478,788	4,097,576	
0	0	0	0	(3,250,890)	
(986,970)	(1,882,486)	(1,016,526)	(1,165,327)	0	
(986,970)	(1,882,486)	(1,016,526)	(1,165,327)	(3,250,890)	

Exhibit B

Regions Allotment FY00		Allotment	Balance	Region 1	Region 2
Total Foster Care	A1900	121,669,483	121,069,483	15,765,081	13,698,454

Forecast Months FY00					
Total	July	August	September	October	November
1.00000	0.07994	0.08194	0.08211	0.08217	0.08180

Exhibit B

Region 3	Region 4	Region 5	Region 6	HQ
17,284,942	32,968,230	17,802,553	20,408,537	3,141,686

December	January	February	March	April	May	June
0.08226	0.08227	0.08293	0.08563	0.08547	0.08591	0.08753

Exhibit B

RM 1000.xls
This shows how foster care is spread to programs by the forecast.
The allotment distribution of foster care by month is shown on pages 15 and 16.

Regions Allotment FY01		Allotment	Balance	Region 1	Region 2
Family Foster Care	A1910	54,998,907	54,998,907	7,039,542	6,116,737
Personal Care	A1920	1,164,561	1,164,561	155,682	135,276
Group Care	A193x, 4x, 9x	46,527,545	46,527,545	6,210,994	5,404,625
Staff Secure GH	A1996	1,071,612	1,071,612	143,257	124,478
Receiving Homes	A1950	4,485,574	4,485,574	599,649	521,043
Misc. FC					
Employ. FPCC	A1964	9,967,152	9,967,152	1,332,451	1,157,781
FH Recruit.	A1965	447,000	447,000	26,088	22,651
FC Liaisons	A1966	252,000	252,000	0	0
Passport Prog.	A1967	2,093,285	2,093,285	273,365	239,014
Intensive FC Assess	A1968	1,604,000	1,604,000		
Adopt Home Study	A1969		0		
FP Suprv.Visit	A1971	1,168,057	1,168,057	153,599	133,626
FP Training	A1972	1,215,344	1,215,344		
Reimburs.	A1973	468,392	468,392		
FP Supp.–DLR	A1976	100,000	100,000		
Other Services	A1961-78	17,032,449	17,032,449	2,254,428	1,957,252
Total Misc.	A1960-70	34,347,679	34,347,679	4,039,911	3,510,324
FC Recoveries					
Support Enfor.	A1981-2	(3,284,372)	(3,284,372)	0	0
SSI/SSA	A1983	(6,661,623)	(6,661,623)	(890,554)	(773,812)
Total Recov.	A1980	(9,945,995)	(9,945,995)	(890,554)	(773,812)

Exhibit B

Region 3	Region 4	Region 5	Region 6	HQ	
7,718,202	14,721,222	7,949,330	9,112,974	2,340,900	
170,691	325,568	175,805	201,539	0	
8,819,647	19,007,373	7,023,867	8,052,039	0	
157,069	299,583	161,772	185,453	0	
657,461	1,254,000	677,149	776,272	0	
1,460,908	2,788,445	1,504,658	1,724,911	0	
28,582	54,515	29,437	33,747	252,000	
0	0	0	0	252,000	
314,914	510,938	347,413	371,274	36,367	
				1,604,000	
				0	
180,231	307,316	188,758	204,527	0	
				1,215,344	1,215,344
				468,392	468,392
				100,000	
2,444,752	4,789,125	2,491,764	2,895,371	199,757	
4,429,387	8,448,339	4,582,028	5,229,830	4,127,860	
0	0	0	0	(3,284,372)	
(976,409)	(1,862,342)	(1,005,648)	(1,152,858)	0	
(976,409)	(1,862,342)	(1,005,648)	(1,152,858)	(3,284,372)	

Exhibit B

Regions Allotment FY00		Allotment	Balance	Region 1	Region 2
Total Foster Care	A1900	132,649,883	132,649,883	17,307,481	15,038,671

Forecast Months FY00					
Total	July	August	September	October	November
1.00000	0.07931	0.08166	0.08190	0.08175	0.08137

Allotment Methodology FY00-01			
Total	100.00%	13.3684%	11.6160%

Exhibit B

Region 3	Region 4	Region 5	Region 6	HQ
18,976,048	36,193,743	19,544,303	22,405,249	3,184,388

December	January	February	March	April	May	June
0.08185	0.08209	0.08279	0.08592	0.08598	0.08694	0.08844

14.6572%	27.9563%	15.0961%	17.3050%

Family Foster Care Rates
June 3, 1999

Family Foster Care Service	July 1, 1996	July 1, 1998 3%	July 1, 1997 12.50 to R&B	July 1, 1998 12.50 to R&B	July 1, 1999 2%	July 1, 2000 2%
Room & Board (R&B)						
0 to 5 years	221.65	228.30	240.80	253.30	258.37	263.53
6 to 11 years	287.95	296.59	309.09	321.59	328.02	334.58
12 & older	345.90	356.28	368.78	381.28	388.91	396.68
Clothing Allowance						
0 to 11 years	34.65	35.69	35.69	35.69	36.40	37.13
12 & older	41.19	42.43	42.43	42.43	43.28	44.14
Personal Incidentals Allowance						
0 to 5	47.26	48.68	48.68	48.68	49.65	50.65
6 to 11	51.42	52.96	52.96	52.96	54.02	55.10
12 & older	55.17	56.83	56.83	56.83	57.97	59.13
Foster Care Spcial Rate—Up to	141.85	146.11	146.11	146.11	149.03	152.01
TOTAL						
0 to 5 YEARS	303.56	312.67	325.17	337.67	344.42	351.31
6 TO 11 YEARS	374.02	385.24	397.74	410.24	418.44	426.81
12 & OLDER	442.26	455.54	468.04	480.54	490.15	499.95

This page intentionally left blank.

Exhibit D

Page 1		Payments Received	Interest Earned	Payments Returned	
Galee Anderson	SSI	$ 24,243	$0	$ 2,919	
Thomas Bakkon	SSI	$ 28,418	$0	$ 1,501	
Angeline Behrent	SSA	$ 19,418	$0	$ 1,158	
Nacole Blimka	SSI	$ 10,916	$0	$ 3,003	
Alisha Breaux	SSI	$ 9,531	$6	$ 953	
Jamie Brundage	SSI	$ 12,279	$0	$ 733	
Rene Calcagno	SSI	$ 16,026	$0	$ 998	
Johnathan Cathey	SSI	$ 1,886	$0	$ 195	
Miracle Combs	SSA	$ 6,856	$23	$ 0	
Jasmine Cotton	SSI	$ 23,362	$0	$ 0	
James Davis	SSA	$ 2,346	$0	$ 0	
William III Dipert	SSI	$ 2,193	$0	$ 1,318	
Latasha Enochs	SSI	$ 20,550	$62	$ 1,388	(1)
Jennifer Filbeck	SSI/ SSA	$ 49, 597	$75	$ 3,241	(1)
Monique Frazier	SSI	$ 22,025	$56	$ 1,357 356.70 (IV-E Cost of Care) 1001.10	(1) (1) (1)
Clayton Gemoyla	SSI	$ 25,778	$0	$ 1,042	(1)
Robert Graves	SSA	$ 3,535	$28	$ 779	(1)

Exhibit D

Account Disbursements	(2) Extra items & special needs	Foster Care Reimbursements
$ 0		$ 21,323
$ 0		$ 26,917
$ 1,296	Transferred to New Rep. Payee	$ 16,964
$ 0		$ 7,912
$ 0		$ 8,584
$ 0		$ 11,545
$ 0		$ 15,028
$ 0		$ 1,691
$ 1,189	Transferred to New Rep. Payee	$ 5,691
$ 0		$ 23,362
$ 0		$ 2,346
$ 0		$ 874
$ 1,232 74.78 550.00 200.00 208.00 200.00	Breakdown: camp computer clothes* skating party clothes* *double billing	$ 17,990
$ 123	overpayment	$ 46,308
$ 3,768 670.00 400.00 960.00 500.00 1200.00	Breakdown: computer bicycle, toys, clothing jacket, shoes Ankle/foot orthosis & collapsable stroller resting splint Trip to Disneyland	$ 16,954
$ 0		$ 24,736
$ 1,040 115.00 825.00 20.00 20.00 20.00 20.00 20.00	Breakdown: insur. premium ? Therapy 4/97 Therapy 4/97 Therapy 4/97 Therapy 4/97 Therapy 8/97	$ 1,743

Exhibit D

Page 2

		Payments Received	Interest Earned	Payments Returned	
Anthony Hallett	SSI	$ 17,757	$0	$ 2,273 "Because of help, he got to pay cost of his food, clothing and shelter"?	(1)
Rachel Hernandez	SSI	$ 11,914	$0	$ 3,009 "Because her assistance, payments based on need (1"4-E")"?	(1)
Kyle Hontz	SSA	$ 143	$0	$ 0	
Danetta Hutchinson	SSI	$ 34,302	$108	$ 3,547 ($2,370 returned because balance was over the resource limit)	
Douglas Johns	SSI	$ 114	$0	$ 114	
Richard Jones	SSI	$ 2,007	$0	$ 1,016	
Dustin King	SSA	$ 3,682	$0	$ 0	
Tracy Lacourse	SSI	$ 4,900	$0	$ 3,550	
Scott Lemiere	SSI	$ 38,194	$0	$ 7,281	(1)
Zachery Lucas	SSA	$ 1,665	$0	$ 0	
Sam Manning, Jr.	SSI	$ 13,934	$0	$ 3,003 Due to adopting	(1)
Kyra Mitchell	SSA	$ 1,576	$0	$ 68	
Christopher Mulkins	SSI	$ 26,840	$8	$ 2,854	(1)
Sarah Nelson	SSI	$ 3,503	$0	$ 0	

Exhibit D

Account Disbursements	(2) Extra items & special needs	Foster Care Reimbursements
$ 0		$ 15,483
$ 0		$ 8,904
$ 0		$ 143
$ 7,604	Breakdown: 1,604 development toys, riding lessons, copier, clothing 1,500 computer 1,492 swingset 1,636 Big Toy* 250 Big Toy 1,122 Furnitue & computer *Told care worker only 200 available	$ 23,258
$ 0		$ 0
$ 990	Erroneous acct. – child got nothing	$ 0
$ 0		$ 3,682
$ 0		$ 1,350
$ 0		$ 30,913
$ 333	Transferred to New Rep. Payee	$ 1,332
$ 0		$ 10,930
$ 0		$ 1,508
$ 324	"For care"?	$ 23,669
$ 2,752	Guardianship Fees $750 balance to father for time child with him, but State continued to pay Foster Care Support! (3)	$ 751

Exhibit D

Page 3

		Payments Received	Interest Earned	Payments Returned	
Marcel Paul	SSI	$ 27,031	$0	$ 384	
Samantha Maurath	SSA	$ 22,692	$152	$ 0	
Alyssa McLennan	SSI	$ 14,497	$66	$ 527	(1)
Ryan O'Connor	SSI	$ 28,266	$0	$ 2,589	(1)
Brandon Phillips	SSI	$ 14,925	$22	$ 6,305 In jail, so SSI took money back	(1)
Elbert Pruett	SSI	$ 2,401	$0	$ 226	
Justin Reynolds	SSI	$ 13,791	$0	$ 224	(1)
Joseph Rogers	SSI	$ 12,036	$0	$ 1,474	(1)
Jasmine Saetern	SSI	$ 4,397	$0	$ 1,404	(1)
Justin Scherer	SSI	$ 24,078	$54	$ 1,206	(1)
Leah Shay	SSI	$ 40	$0	$ 40	
Denita Smith	SSA	$ 5,977	$0	$ 610	(1)
Daniel Stephenson	SSI	$ 38,662	$0	$ 1,001	

Exhibit D

Account Disbursements	(2) Extra items & special needs	Foster Care Reimbursements
$ 0		$ 26,647
$ 5,515	Transferred to New Rep. Payee	$ 17,329
$ 4,584	Breakdown: 2,000 Bedroom set 328 Preschool 400 Daycare 700 Rocking chair, computer, clothing, educational toys 365 Daycare	$ 9,453
$ 500	"I am requesting DCFS forego reimbursement in final month to provide child with transitional expenses he is incurring." (Why not all children?)	$ 25,176
$ 0		$ 8,642
$ 0		$ 2,175
$ 1,519	New Trustee	$ 12,047
$ 0		$ 10,562
$ 11	"After reimbursing for all care thru 2/97 there is a remaining account balance of $11.91."	$ 2,980
$ 2,225	Breakdown: 913 part payment on piano for brothers 1,312 for one-half of beds for brothers	$ 20,700
$ 0		$ 0
$ 1,838	Breakdown: 614 for transition rent & damage deposit 1,224 for rent & utilities	$ 3,529
$ 0		$ 37,621 (1992-1997)

Exhibit D

Page 4		Payments Received	Interest Earned	Payments Returned	
Jacob Taylor	SSA /SSI	$ 41,825	$0	$ 0	
Amanda Tulowetzke	SSA	$ 30,262	$526	$ 0	(1)
Jay Warden	SSI	$ 44,186	$0	$ 605	(1)
Wiley Anitra	SSI	$ 21,436	$0	$ 5,638	(1)
		$ 785,952	$ 1,186	$ 69,533	

(1) over payment
(2) See TRUST FUND HANDBOOK Section 3 Account Disbursements (Dep. Justinen, Ex. 5)
(3) Smoking Gun
(4) Includes only amounts actually paid for direct benefit to children (i.e., small print)

Exhibit D

Account Disbursements	(2) Extra items & special needs	Foster Care Reimbursements
$ 547	New Trustee	$ 41,278 (1991-1997)
$ 11,300	Breakdown: 9,197 transferred to Amanda following Court ordered decree of Emancipation DSHS denied $127.50 dental care bill? See letter of Sharon Morrison! 377 School clothes/supplies 875 Alternative school 200 School clothes 200 School clothes 300 Clothing 100 Clothing	$ 19,488
$ 0		$ 42,580 (1991-1999)
$ 5,999	Breakdown: "All but $450 (clothing, learning aids & educational toys went to New Rep. Payee	$ 9,799
$ 23,714 (4)		$ 662,897

Keffeler

Plaintiff's Narrative Summary of
48 Random Cases

Date: March 9, 2000

Case No. 1: Calee Anderson

Comments: 15 year old girl, who was in foster care from 1993 until 1997. No Special needs account disbursement was ever made on her behalf.

Account Disbursements: -0-
State Received: $21,323.82 of foster care reimbursement

Case No. 2: Thomas Bakkon

Comments: This 12 year old in [sic] was in foster care for 5 years (recorded). No Special needs account disbursement was ever made on her [sic] behalf.

Account Disbursements: -0-
State Received: $26,917.31 of foster care reimbursement

Case No. 4: Nacole Blimka

Comments: Nacole also received no disbursements. The account was swept on 8/5/97 when the State reimbursed itself

$1,966.20 for foster care previously provided. Account again swept on 10/15/97 for $983.00 of previously provided foster care expenses. Nacole's case demonstrates that the State does not pass benefits through to children but, instead, repays itself for services already provided.

Account Disbursements: -0-
State Received: $7,912.70 of foster care reimbursement

Case No. 9: Clark Casey

Comments: This is another illustration of account sweeping. On a single day in 1995, the State reimbursed itself $2,233 for foster care provided in the months of May, June, July, August, September and October of 1994. No Special needs account disbursement was ever made on Casesy's [sic] behalf.

Account Disbursements: -0-
State Received: $2,233.00

Case No. 11: Jasime Cotton

Comments: This case illustrates that the payment was not a pass-through payment but a reimbursement. On 5/8/96, Cotton received $11,676.29 of social security payments, likely lump sum social security award. The account was diminished on 12/2/96 from $12,171.00 to $495.42. The State thus repaid foster care

expenses of $11,696.00 dating back to 4/94. She received no account disbursements in hers [sic] 3 years of foster care.

Account Disbursements: -0-
State Received: $23,362.37

Case No. 12: Latasha Enochs

Comments: Enochs received $200 for clothing with some regularity to keep her account balance below $2,000. She was also sent to camp, and received a computer and had a savings account.

Account Disbursements: $1,232
State Received: $20,550

Case No. 15: Jennifer Filbeck

Comments: Jennifer was in foster care for 9 years. Caseworker identified no special needs until last day of care when Jennifer received $123.20. The case also illustrates that the State repays itself foster care rather than passing the benefits through to the children. In July, 1989, the State repaid the cost of foster care for August, October, November and December, 1988; and May, 1989. It also illustrates the State's savings policy. For instance, the State on 8/30/89 transferred $300.00 to savings but withdrew from savings on 12/4/89 $115.40 to repay its cost of foster care having previously diminished the account

balance by foster care reimbursements to itself.

Account Disbursements: $123.20
State Received: $46,308.63 for foster care reimbursement

Case No. 16: Monique Frazier

Comments: Monique Frazier received $3,768.73 of account disbursements. In March of 1995, she went to Disneyland; in April of 1995, she received an ankle splint; in July of 1995, she received a stroller; and in March of 1997, she received a computer, all in the category of special needs.

Account Disbursements: $3,768.73
State Received: $16,954.99 for foster care reimbursement

Case No. 17 : Clayton Gemoyla

Comments: On 9/18/96, Clayton received $14,485.19, likely the lump sum payment. $13,989.77 was then paid to the State. The State received $25,778.17 and the boy received nothing in his 2 years in foster care.

Account Disbursements: -0-
State Received: $24,736.17 for foster care reimbursement

Case No. 21: Rachel Hernandez

Comments: State reimbursed itself $1,966.20 on 6/18/97 to repay for services previously rendered. Another illustration of account sweeping and illustrates that the state's reimbursement program is repayment of past debt and not pass through.

Account Disbursements: -0-
State Received: $8,904.80 for foster care reimbursement

Case No. 23: Danetta Hutchinson

Comments: Danetta received $7,604.60 of special disbursements including a $1,600 big toy. The price of the big toy exceeded her foster care balance and the foster care program reimbursed the remainder. She also received a computer, toys, riding lessons, a copier, clothing, and a savings account. State paid itself $23,258.40 compared to Danetta's $7,604.60. Danetta received 33% of her social security check back in special benefits.

Account Disbursements: $7,604.60
State Received: $23,258.40 for foster care reimbursement

Case No. 32 : Alyssa McLennan

Comments: Alyssa received a rocking chair, a keyboard, a clothing allowance, and

education toys totaling $4,584.26. The State repaid itself $9,453.46. Here the caseworker managed to provide 50% of the benefit to meet special needs.

Account Disbursements: $4,584.26
State Received: $9,453.46 for foster care reimbursement

Case No. 34: Christopher Mulkins

Comments: The State reimbursed itself $23,669.88. Chris received special disbursements of only $324.00. The State swept the account on 2/2/96 collecting a little over $1,500 to repay itself foster care it had provided on 8/95, 9/95 and 12/95. In this young man's case, the State chose the sweep method to keep the account below $2,000.

Account Disbursements: $324.00
State Received: $23,669.88 for foster care reimbursement

Case No. 36: Ryan O'Connor

Comments: From 1993 to 1998 the State reimbursed itself $25,176.95. On the last day of his care, Ryan received $500.00. Ryan is disabled and started his adult live [sic] with only $500.

Account Disbursements: $500.55
State Received: $25,176.95 for foster care reimbursement

Case No. 37: Marcel Paul

Comments: Marcel was in foster care from 1992-1997. He received no special account disbursements.

Account Disbursements: -0-
State Received: $26,647.33

Case No. 38: Brandon Phillips

Comments: Brandon Phillips received no money during his 3 yrs. in foster care.

Account Disbursements: -0-
State Received: $8,642.51

Case No. 41: Joseph Rogers

Comments: 12 yr. old Joseph Rogers also received no money between 1995-1997.

Account Disbursements: -0-
State Received: $10,562.13

Case No. 45: Daniel Stephenson

Comments: From 1992-1998, the State paid itself $37,621.73. This young man, between

the age of 6-12 Received [sic] no special account disbursements.

Account Disbursements: -0-
State Received: $37,621.73

Case No. 46: Jacob Taylor

Comments: Jacob Taylor, a male, collected $41,825.96 of SSA/SSI benefits. The State collected $41,278.08 and $547.88 was returned to the Social Security Administration. This young man received no money whatsoever while he was in foster care.

Account Disbursements: $547.88
State Received: $41,278.08

Case No. 47: Amanda Tulowetzke

Comments: This case, again, illustrates that girls do a little better in foster are [sic] than do boys. She received account disbursements of $11,300.26. Caseworker requested money for a dental crown. Trust fund unit refused because dental crowns are not within medial care authorized for federal reimbursement. Amanda received regular disbursements from her account for clothing, 3 months of alternative school enrollment with supplies. The lion's share of her special reimbursement occurred when she surprised DSHS with an emancipation decree. She received $9,179.76 on the date of her emancipation.

Exhibit E

Account Disbursements: $11,300.26
State Received: $19,488.93

Case No. 48: Jay Warden

Comments: Jay Warden was in foster care for 8 years, receiving no disbursements.

Account Disbursements: -0-
State Received: $43,580.92

Exhibit F

Children's Administration
Regional Allotments
10/29/99 12:34
C19

Source of Funds FY00	
1910, 1920	
State	37,407,045
Total State	37,407,045
IV-E (658)	9,317,124
T19 (T & U)	2,614,114
TANF	3,579,000
Total Federal	15,510,238

Exhibit G

SOCIAL SECURITY ACCOUNTING

Last Name	HUTCHINSON
First Name	DANETTA
MI	
SSN	536-27-6761
DOB	4/5/93
Funding Source	SSI

Payments Received	$34,302.52
Interest Earned	$108.08
Payments Returned	$3,547.60
Account Disbursements	$7,604.60
Foster Care Reimbursement	$23,258.40
Balance	$0.00

Wendesday, January 15, 2000

Exhibit G

Social Security Accounting

Last Name	BAKKON
First Name	THOMAS
MI	T
SSN	536-90-8793
DOB	7/22/81
Funding Source	SSI

Payments Received	$28,418.96
Interest Earned	$0.00
Payments Returned	$1,501.65
Account Disbursements	$0.00
Foster Care Reimbursement	$26,917.31
Balance	$0.00

Thursday, December 23, 1999

SUPERIOR COURT OF WASHINGTON
COUNTY OF OKANOGAN

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, GUARDIAN, AND OTHER PERSONS SIMILARLY SITUATED, Plaintiff, v. STATE OF WASHINGTON DEPARTMENT OF SOCIAL AND HEALTH SERVICES, AND THE DEPARTMENT OF LICENSING, Defendants.	No. 96-2-00157-2 PLAINTIFF'S ~~PROPOSED~~ ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

This matter came on for hearing upon Plaintiff's Motion for Summary Judgment. The following documents were considered.

I.

DOCUMENTS CONSIDERED

1. Complaint for Class Action, Cd 1;

2. Plaintiff's Motion for Summary Judgment, Cd 35;

3. Declaration of Facts in Support of Plaintiff's Motion for Summary Judgment, Cd 36, with attached Exhibit Notebook;

4. The Exhibits contained in Plaintiff's Exhibit Notebook referenced in the aforesaid Declaration of Facts, Cd 36;

5. Brief in Support of Motion for Summary Judgment filed by Plaintiff, Cd 37;

6. Defendant's Motion for Summary Judgment, filed by the State of Washington, Department of Social and Health Services, Cd 40;

7. Affidavit of Richard Anderson, dated July 24, 1997, with attachments and exhibits, Cd 40;

8. Memorandum in Support of Defendant's Motion for Summary Judgment and in Opposition to Plaintiff's Motion for Summary Judgment, filed by the State of Washington, Cd 41;

9. Reply Brief filed by Plaintiffs, Cd 44A;

10. Affidavit of Richard J. Anderson, dated September 17, 1997, Cd 51;

11. Department's Response to Plaintiff's Reply Brief, filed by the State of Washington, dated September 17, 1997, Cd 50;

12. Plaintiff's Motion to Amend Complaint to Clarify Redress Sought by Plaintiffs, dated October 1, 1997, Cd 46;

13. Plaintiff's Motion to Add Additional Named Defendants as Parties in Interest, Cd 45;

14. Declaration of Richard Price, Cd 4

15. Plaintiff's Motion to Amend Complaint, Cd 55;

16. Plaintiff's First Amended Complaint, Cd 58;

17. Defendant's Motion to Strike Portions of Amended Complaint, Cd 63;

18. Department's *Supplemental* Memorandum in Support of Motion for Summary Judgment, Cd 65;

19. Order Granting Amendment of Order Certifying Class Action, Cd 66;

20. Order Allowing Amendment of Complaint, Cd 67;

21. Plaintiff's Reply brief re Motion to Strike, CD 68;

22. Department's Supplemental Brief on Summary Judgment, Cd 70;

23. Defendant's Motion to Dismiss, Cd 71;

24. Defendant's Memorandum in Support of Motion to Dismiss, CD 73;

25. Plaintiff's Brief in Opposition to Motion to Dismiss, Cd 74;

26. Plaintiff's Outline of Briefing Arguments (not filed);

27. Motion to Strike Outline of Briefing Arguments, Cd 75;

28. Outline of Defendants Briefing Arguments, Cd 77;

29. Memorandum Opinion, CD 78;

30. Arguments of Counsel, Rodney M. Reinbold for Plaintiff and Debra Casparian for Defendants, heard October 3, 1997;

31. Answer;

32. Motion for Class Action Certification;

33. Motion and Memorandum in Support of Motion to Dismiss Office of Financial Recovery's Failure to Join a Necessary and Indispensable Party;

34. Amended Answer;

35. Reply Brief Re: Class Certification and Motion to Join the Social Security Administration;

36. Order Certifying Case to Proceed as a Class Action, Defining the Class and Denying the Defendant's otion [sic] to Dismiss; and

37. Motion to Amend Class.

NOW, THEREFORE,

Based upon the Court's Memorandum Opinion dated September 29, 1998, the Plaintiff's Motion for Summary Judgment as amended, is granted, accordingly IT IS ORDERED:

* * * * *

II.

INJUNCTIVE RELIEF

2.1 The State of Washington and its officers, agents or representatives including the above named Defendants, Lyle Quasim and Michael R. Hobbs, are enjoined from engaging in any legal process to remove a private representative payee designated by the Social Security Administration or to institute or threaten to institute legal proceedings or administrative proceedings to require a private representative payee to repay the State of Washington for the cost of maintaining a child in foster care from Title II Social Security Benefits or Title XVI Social Security Benefits.

2.2 IT IS FURTHER ORDERED that the State of Washington and its agents are mandatorily enjoined beginning 120 days from entry of this Order, in those situations where the State or its DSHS Trust Fund Unit, apply to become a representative payee on behalf of minors in its Foster Care Program, under Title II or Title XVI of the Social Security Act, to, in advance of, or simultaneously with such application, provided the minor child's , [sic] parent or legal guardian and court with notice including, but not limited to, at least, the following:

2.2.1 A written notice that any money received by the representative payee is to be held in trust to be paid for the benefit of the child beneficiary and will not be paid to the state to offset the cost of maintaining a child in foster; and

2.2.2 An application form for representative payee status is to be enclosed with a list of preferred representative payees along with the necessary mailing and filing deadline.

2.3 In those cases where the State of Washington, its agents, or the Department of Social And Health Services Trust Fund Unit, have been or will be serving as Representative Payee under Title II or Title XVI of the Social Security Act, for a child enrolled in the State's foster care program, the State of Washington, and its agents and representative and the Washington State Department of Social and Health Services Trust Fund Unit, are enjoined from in any way administering the funds to offset the State's cost of maintaining a child in foster care but will administer the program to maximize public assistance and social security benefits.

III.

ACCOUNTING FOR DIVERTED BENEFITS

3.1 The State of Washington, its agents, and its Department of Social and Health Services Trust Fund Unit are hereby ordered to provide to the Court and to Rodney Reinbold and Richard Price within (120) days after this Order is signed.

3.1.1 A list of all class members for whom it has acted or is acting as representative payee under Title II of the Social Security Act since April 18, 1975 and for whom the statute of limitations has not expired; and

3.1.2 A list of all class members for whom it has acted or is acting as representative payee under Title XVI of the Social Security Act since April 18, 1975 for whom the statute of limitation s [sic] has not expired ; [sic] and

3.2 An accounting of all moneys received and spent for each listed beneficiary since April 18, 1975, [sic]

3.3 Defendants will preserve all current records and will not destroy, alter or purge any records now in existence.

3.4 The records produced shall be kept confidential by the attorneys who receive them and they shall be filed with the clerk of the court in a sealed envelope.

3.5 The Defendant, pursuant to RCW 40.14.060, has destroyed records earlier than 1991.

IV.

RESTORATION OF DIVERTED FUNDS

4.1 Upon receipt of the aforesaid information, Richard Price and Rodney Reinbold shall, within 45 days, file a claim with the State of Washington Office of Risk Management notifying the State of its obligation to restore benefits which are revealed to have been wrongfully diverted from each class member's account. Such Claims shall include interest at the rate of 12% per annum.

4.2 IT IS FURTHER ORDERED that the total dollar amount determined in paragraph 4.1 shall be paid into a single estate guardianship "common fund" to be administered by an independent attorney/estate guardian approved by the Court.

4.3 The guardian shall administer the common fund as follows:

4.3.1 The Attorney/Guardian shall deposit and maintain control of the monies funded by the state in a

single bank account entitled "Keffeler Class Action Social Security Benefits Account";

4.3.2 The Attorney/Guardian shall hire an accounting firm, approved by the court, to establish an accounting system in order to account to individual class members in accordance with this and subsequent orders. The Attorney/Guardian shall invest the funds, pending distribution, in accordance with RCW 11.92.040(5)(a);

4.3.3 The Attorney/Guardian shall pay the attorney fees ordered by the Court;

4.3.4 The Attorney/Guardian shall apply for the set aside of funds budgeted for administration of the fund.

4.3.5 Following payment of attorney fees and set aside for costs of administration, the Attorney/Guardian shall disburse funds from the common account to individual class members or their representative payees on a pro-rata basis in accordance with the accounting to be approved by this Court, and in accordance with RCW Title 11 concerning the disbursement of funds to minor guardianship estate beneficiaries. Provided, however, in no event shall the funds be disbursed to the State of Washington to offset the cost of maintaining the child in foster care.

4.3.6 The Attorney/Guardian shall file a quarterly report with the Court as to all actions taken including an accounting for all funds received and disbursed.

4.3.7 No administration fees or expenses shall be paid unless approved by order of this Court.

V.

ATTORNEYS FEES

IT IS HEREBY ORDERED that Plaintiff should be awarded attorney fees, the amount of which, and the theory under which awarded, shall abide future ruling of this Court.

IV.

JUDGMENT IN FAVOR OF DANNY KEFFELER

6.1 The State of Washington violated 42 U.S.C. 408 when it and its agents diverted $4,998 (20 months payments from July 1991 to March 1993) to itself to reimburse the State's cost of foster care for him. Accordingly, Danny Keffeler is entitled to restoration of his Social Security Benefits in the amount of $4,998 plus interest from May 1992, the midpoint between the months in which payments were diverted (July 1991-March 1993), at the rate of 12% per annum, which interest total $3, 872 to November 1, 1998.

6.2 Additionally, the State's violation of 42 U.S.C. 408, proximately caused Danny Keffeler to incur attorney's fees of $2,639, in appearances before the Social Security Administration Board of Hearings and Appeals in defending himself against the State of Washington's effort to divert $5,430 of his benefit.

6.3 Additionally, the State's violation of 42 U.S.C. 408 proximately caused Danny Keffeler to incur attorneys fees in appearances before the Superior Court of the State of Washington to preserve Social Security moneys against

claims made by the State of Washington against his Guardianship Estate for reimbursement of the cost of foster care, which fees were in the amount of $2,791. This amount should bear interest at 12% per annum as of February 2, 1995, approximately the last charge made, which will result in interested charges of $1,256 to November 1998.

Dated: January 5, 1999.

//s//
Jack Burchard, Superior Court Judge

Presented by:

REINBOLD & GARDNER

//s//
Rodney Reinbold WSBA #4656
Attorney for Plaintiff

LAW OFFICES OF RICHARD B. PRICE, P.S.

//not s//
Richard B. Price, WSBA #3203
Attorney for Plaintiff

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE
COUNTY OF OKANOGAN

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, GUARDIAN, AND OTHER PERSONS SIMILARLY SITUATED, Plaintiff, v. STATE OF WASHINGTON DEPARTMENT OF SOCIAL AND HEALTH SERVICES, QUASIM AND HOBBS, Defendants.	No. 96-2-00157-2 MEMORANDUM OPINION

QUESTION PRESENTED:

Does 42 USC § 407 preempt the procedure whereby Washington DSHS, as protective payee, takes social security benefits from children in compensation for the cost of foster care?

Danny Keffeler sues one behalf of himself and other foster children. Danny was placed in foster care in 1989. When his mother died in 1990, he was left with no surviving parent and became eligible for social security survivor benefits under Title II. In the State of Washington approximately 370 children in foster care receive survivor benefits under Title II of the Social Security Act and about 1261 receive benefits under Title XVI which provides supplemental security income for the disabled. For all the

children in foster care the state makes payments for the cost of basic care and needs such as food, clothing, shelter and medical care.

Danny Keffeler's grandmother was appointed guardian of his estate in state court and protective payee to receive his social security payments by the Social Security Administration. The State of Washington Department of Social and Health Services (DSHS) successfully applied to the Social Security Administration to be appointed protective payee (For the purpose of this argument DSHS, DCFS and Department are used interchangeably). However, the Office of Hearing and Appeals eventually ruled that the grandmother should be reinstated. While it served as representative payee, in accordance with state statutes and regulations, DSHS received Danny Keffeler's social security payments and without his consent paid that money to itself as compensation for his foster care expenses.

When the grandmother was reinstated as protective payee DSHS attempted collection by filing a creditor's claim and a motion to show cause in the state guardianship proceedings. DSHS also pursued administrative appeals of the adverse social security administration action.

In essence Danny Keffeler's claim is typical of all foster children in Washington who are entitled to social security benefits. It is the policy of the State of Washington DSHS to apply to the Social Security Administration to become the representative payee for all children in foster care. That procedure is authorized by state law. RCW 74.13.060. WAC 388-70-069. When DSHS received social security payments on behalf of foster children, it transfers the money to itself as reimbursement for foster care expenses it has paid.

The Department of Social and Health Services is acting under the authority of RCW 74.13.060 which provides in relevant part:

> The secretary or his designee or delegatee shall be the custodian without compensation of such moneys and other funds of any person which may come into the possession of the secretary during the period such person is placed with the Department of Social and Health Services pursuant to RCW 74.13. As such custodian, the secretary shall have authority to disburse moneys from the person's funds for the following purposes only and subject to the following limitations.
>
> . . . (2) The secretary may apply such funds against the amount of public assistance otherwise payable to such person. This includes applying, as reimbursement, any benefits, payments, funds, or accrual paid to or on behalf of said person from any source against the amount of public assistance expended on behalf of said person. . . .

The Department believes that a number of administrative regulations also require it to use foster children's social security benefits to repay the cost of foster care. The Department particularly relies upon WAC 388-70-069 which states:

> (1) If a child in foster care is entitled to financial benefits the income shall be used on behalf of the child to help pay for the cost of the foster care received . . . .
>
> (a) Income includes SSI, RSDI, veteran's benefits, railroad retirement benefits, inheritances, or any other payment for which the child is eligible. . . .

For the sole purpose of obtaining reimbursement for foster care costs, DSHS applies to the Social Security Administration to be appointed representative payee for all children in foster care who are eligible for social security benefits. Under federal regulation DSHS may be appointed as representative payee. DSHS claims that when it compensates itself for foster care services it is acting properly because it is using the money toward the cost of maintenance (including food, shelter, clothing, medical care and personal comfort items) as required by federal law, 20 CFR § 404.

Similar state attempts to reach social security payments have experienced a history of rejection. The issue arises because federal law provides unique protections to social security payments. 42 USC § 407 states:

> (a) The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.
>
> (b) No other provision of law, enacted, on or after April 20, 1983, may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section.

The Supreme Court first addressed the issue in *Philpott v. Essex County Welfare Board*, 409 U.S. 413, 93 S. Ct. 590, 34 L. Ed. 2d 608 (1973). New Jersey provided financial assistance to the totally disabled. As a condition of receiving assistance they were required to execute an agreement to

reimburse the county welfare board. When one of the beneficiaries collected social security disability, the welfare board sued to enforce the agreement to reimburse. The Supreme Court ruled that § 407 bars a state from attempting to attach social security benefits as reimbursement for state welfare assistance payments.

Two observations by the Supreme Court are especially pertinent:

> We see no reason why a state, performing its statutory duty to take care of the needy, should be in a preferred position as compared with any other creditor. 409 US at 416.

> It (§ 407) imposes a broad bar against the use of any legal process to reach all social security benefits. That is broad enough to include all claimants, including a state. 409 US at 417.

In *Bennett v. Arkansas*, 485 US 395, 108 S. Ct. 1204, 99 L. Ed. 2d 455 (1988) the state attached prisoners' social security benefits to defray the cost of maintaining the prison systems. Under the State Prison Inmate Care and Custody Reimbursement Act, Arkansas filed an action in state court. Arkansas courts ruled and the state argued that § 407 contains an implied exception to the exemption from legal process where the state provides for the care and maintenance of a beneficiary of social security funds. The Supreme Court found no such exception and ruled that § 407 preempted Arkansas' attempt to attach prisoners' social security benefits. *Bennett* rules out any attempt to attach social security benefits even when the benefits would be used to pay the cost of caring for a prisoner.

In *Brinkman v. Rahm*, 878 F.2d 263 (9th Cir. 1989) the Ninth Circuit ruled that § 407 preempts the procedure whereby Washington deducted social security benefits to pay the cost of patient care from the accounts of involuntarily committed mental health patients. Although court action and attachment were threatened, the actual practice was to provide written notice and then simply deduct the funds from the patients' hospital accounts.

The issue was most clearly addressed by the Ninth Circuit in *Crawford v. Gould*, 56 F.3d 1162 (9th Cir. 1995). Under California law patients committed to state psychiatric hospitals were liable for the cost of their care, support and maintenance. Each hospital maintained a patient trust account, where all funds, including social security received by the patient, were deposited. Patients were provided statements of financial liability and required to sign authorization to withdraw funds to pay the cost of care. Whether the patient signed the authorization or not, the funds were withdrawn.

California argued that *Brinkman* does not apply because the hospital's deduction of money from patient accounts did not run afoul § 407's prohibition against attachment or other legal process. *Crawford* clearly rejected that argument in favor of a more expansive view of § 407's protection. 56 F.3d at 1166:

> Our conclusion that "other legal process" includes the procedure that California uses to deduct social security benefits, is consistent with the purpose of § 407. The non-assignment provision was not designed to preclude use of only the judicial process to obtain Social Security benefits. Rather § 407(a) is designed "to protect social security beneficiaries and their dependents from the claims of creditors"....The cramped reading of § 407

California urges would enable the state to obtain Social Security benefits through procedures that afford less protection than judicial process affords.

In the present case DSHS offers no persuasive argument to distinguish *Crawford*. DSHS relies upon state law which is preempted by § 407. Alternatively, DSHS relies upon federal regulations, which also must yield to § 407. This Court need not decide whether DSHS may apply and be appointed protective payee for the foster children involved. The question is whether § 407 prohibits DSHS from paying the children's social security benefits to itself as reimbursement for foster care expenses.

DSHS argues that its actions as protective payee do not constitute transfer, attachment or other legal process. This argument should be rejected for at least four substantial reasons. First, application for appointment as protective payee may not violate § 407 per se. However, in these cases DSHS only applies as protective payee for the purpose of obtaining the foster children's social security funds. In that context, DSHS's actions do constitute a transfer, assignment, attachment or other legal process.

Second, as explained in *Crawford* the purpose of § 407 is to protect social security benefits. Allowing DSHS to transfer the money to itself as protective payee would enable the state to obtain social security benefits through procedures that afford less protection than judicial process.

Third, there is no legal basis for distinguishing between the state action forbidden in *Crawford* and the DSHS action challenged here. In *Crawford* the state hospital paid itself money from the patients' trust accounts. Here, DSHS pays itself money held for the benefit of foster children.

Fourth, there is no legal basis for giving foster children less protection for their social security benefits than adult welfare recipients, state prisoners or involuntarily committed mental patients receive.

The policy and fairness issues raised by DSHS are accurately answered by Judge Trott in his concurring opinion in *Crawford*, 56 F.3d at 1169:

> Nevertheless, Judge Tang's conclusion seems to be compelled by Brinkman v. Rahm, 878 F2d 263 (9th Cir. 1989) (per curiam). 42 U.S.C. § 407 as construed by Bennett v. Arkansas, 485 U.S. 395, 108 S.Ct. 1204, 99 L.Ed. 2d 455 (1988) (per curiam), says what it says, and we should be loath to constrict the catchall words, "or other legal process" to allow the state access to a patient-debtor's money. If the patient-debtor were not under the absolute control of the state, a process such as execution, levy, attachment, garnishment, or some "other legal process," would be needed to get at his funds. But, because in this instance the state controls both the patient and his money, the state need not resort to such devices, as this case demonstrates. Under these circumstances, permitting the state to say, as it does, that taking money from people who don't want to give it up is not "legal process" sounds too much like a construction out of Bleak House, or the parchment stuff that animates Dick the Butcher in Henry the Sixth, Part 2. The end ultimately may be palatable, but the state's recommended manner of achieving it is not.
>
> California's goal may well be reachable, but we cannot get there from here without a sturdy legislative bridge. Thus, the answer to California's problem lies not in the courts but in Congress where, who knows, my analysis

may prove to be misguided. Accordingly, I concur in Judge Tang's Opinion.

This Court concludes that 42 USC § 407 preempts the procedure whereby Washington DSHS, as protective payee, takes social security benefits from children as compensation for the cost of foster care.

Additionally, plaintiff has argued that the notice provided by DSHS was defective and violated due process requirements as described in *Crawford* and other authorities. DSHS maintains this Court should not reach the due process issue because actual notice was provided by the Social Security Administration, not a party to this action. DSHS uses a similar argument to avoid responsibility for its own appointment as protective payee. DSHS maintains that because the Social Security Administration chose to appoint DSHS, its actions should not be construed as unlawful.

However, two conclusions are clear. First, the notice to foster children is gravely deficient and potentially misleading in failing to inform them of the intended result of DSHS's appointment. Second, fair and sufficient notice is a requirement of due process. Therefore, it is clear that DSHS takes social security benefits from children without due process of law. DSHS offers no authority for the proposition that it may take full advantage of the defective notice because it was issued by Social Security.

IN THE SUPERIOR COURT OF WASHINGTON
FOR OKANOGAN COUNTY

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, GUARDIAN, AND OTHER PERSONS SIMILARLY SITUATED, Plaintiff, v. STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES AND DEPARTMENT OF LICENSING, Defendants.	No. 96-2-00157-2 ORDER ALLOWING AMENDMENT OF COMPLAINT

THIS matter having come on regularly before the above-entitled Court on Plaintiff's Motion to Add Additional Named Defendants As Real Parties In Interest and the Court having considered Plaintiff's Motion and supporting information and having heard oral arguments of counsel by telephonic conference and being fully advised in the premise,

NOW THEREFORE,

IT IS HEREBY ORDERED that Plaintiffs are granted leave to file an Amended Complaint naming Lyle Quasim, the Director of the Department of Social and Health Services and Michael R. Hobbs, Program Manager for Social Security Income Department of Social and Health Services Department of Children and Family Service, as additional named defendants.

DATED this 7th day of November, 1997.

Presented by:

LAW OFFICE OF RICHARD B. PRICE, P.S., INC.

Richard B. Price, WSBA #3203
Co-Counsel for Plaintiff

REINBOLD & GARDNER

Rodney Reinbold, WSBA #4656
Co-Counsel for Plaintiff

Copy received, approved as to form,
Notice of presentment waived:

//ss//

Debra E. Casparian, WSBA #26354
Assistant Attorney General as
Attorneys for State of Washington
Dept. of Social & Health Services

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE
COUNTY OF OKANOGAN

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, GUARDIAN, AND OTHER PERSONS SIMILARLY SITUATED, Plaintiff, v. STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES, AND DEPARTMENT OF LICENSING, Defendants.	No. 96-2-00157-2 ORDER GRANTING AMENDMENT OF ORDER CERTIFYING CLASS ACTION

THIS matter having come on regularly before the above-entitled Court on Plaintiff's Motion to Amend the Order Certifying the Class previously entered on the 19th day of May, 1997, so as to include foster children within the state of Washington receiving Title XVI Social Security payments and the Court having considered Plaintiff's Motion and supporting information and having heard oral arguments of counsel by telephonic conference and being fully advised in the premise,

NOW THEREFORE,

IT IS HEREBY ORDERED that definition of the class in paragraph 2 on page 4 of the Order Certifying the Class is amended to read as follows, to wit:

2. The class hereby certified is defined as follows:

Subclass A. All foster children within the State of Washington, past, present and future in foster care that receive Title II Social Security payments for whom the State of Washington acts or has sought to act as "representative payee".

Subclass B. All foster children within the State of Washington, past, present and future in foster care that receive Title XVI Social Security payments for whom the State of Washington acts or has sought to act as "representative payee".

IT IS FURTHER ORDERED that the Class Certification Order of May 19, 1997 shall remain in full force and effect in all other respects except as modified by this Order.

IT IS FURTHER ORDERED that the Defendant State of Washington is granted until the 4th day of November, 1997 to submit any additional authority concerning the amendment of the class definition to include Subclass B. The Plaintiffs shall be granted until November 25, 1997 to respond to the State any pleadings filed by the State. The Defendant State of Washington shall be granted until December 8, 1997 to reply.

IT IS FURTHER ORDERED that the matter of the amendment of this Order will be considered submitted without oral argument unless specifically noted for oral argument by any parties on or before December 10, 1997.

DATED this 7th day of November, 1997.

Presented by:

LAW OFFICE OF RICHARD B. PRICE, P.S., INC.

Richard B. Price, WSBA #3203
Co-Counsel for Plaintiff

REINBOLD & GARDNER

Rodney Reinbold, WSBA #4656
Co-Counsel for Plaintiff

Copy received, approved as to form,
Notice of presentment waived:

//ss//
Debra E. Casparian, WSBA #26354
Assistant Attorney General as
Attorneys for State of Washington
Dept. of Social & Health Services

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE
COUNTY OF OKANOGAN

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, GUARDIAN, AND OTHER PERSONS SIMILARLY SITUATED, Plaintiff, v. STATE OF WASHINGTON DEPARTMENT OF SOCIAL AND HEALTH SERVICES, AND THE DEPARTMENT OF LICENSING, Defendants.	No. 96-2-00157-2 ORDER CERTIFYING CASE TO PROCEED AS A CLASS ACTION, DEFINING THE CLASS AND DENYING DEFENDANTS' MOTION TO DISMISS

THIS MATTER having come on regularly before the above entitled Court on Plaintiffs' motion to certify a class wherein the Plaintiffs could proceed as a representative of all other persons similarly situated and the Plaintiffs having moved during argument to modify the definition of the class to be certified and there be no objection from the State and the Court having heard the arguments of counsel, read the memorandum and the files in this case and being fully informed in the premises, the Court does find as follows:

1. Plaintiffs do satisfy Civil Rule 23(a)(1) in that the State's admission of at least 370 current members of the class make joinder impractical.

2. Plaintiffs satisfy Civil Rule 23(a)(2) as to commonality in that the overriding, common legal issue

which pervades the entire case is whether the Defendant State, as representative payee, is legally entitled to pay itself or receive from any other designated representative payee monies as reimbursement for services provided by the State to children in foster care. This issue outweighs all other aspects of the case.

3. Plaintiffs satisfy Civil Rule 23(a)(3) in that Plaintiffs' claims are typical of the putative class members' claims with regard to the common issue cited immediately above. That common issue is identical to every member of the class and that issue does not raise antagonistic or prejudicial interests of one class member against another.

4. Plaintiffs satisfy Civil Rule 23(a)(4) in that both the guardian and ward have signed the complaint. There is no substantial difference between the guardian's interest and the ward's interest with respect to the common issue recited above. Plaintiffs' co-counsel are experienced trial lawyers and have the financial resources and legal expertise to adequately and competently represent the named Plaintiffs as well as the putative class members.

5. The case should be litigated one time as to whether officers of the State of Washington are violating the law by applying or receiving foster children's Title II Social Security payments as reimbursement for expenditures made for foster care. The most efficient way to resolve that matter and give direction to the State without unnecessarily involving other Courts and running the risk of inconsistent decisions is to certify the case pursuant to Civil Rule 23(b)(2) even though it could, as well, be certified as a 23(b)(1)(A) or 23(b)(1)(B) action.

In the event the Court finds that the Defendant State has wrongfully diverted the foster children's Title II Social

Security payments, any reimbursement to the class will follow automatically. Money reimbursement to the class, in such event, will not change the character of the suit. Injunctive and/or mandatory injunctive relief is overriding in this situation making certification pursuant to Civil Rule 23(b)(2) appropriate.

6. The case is not moot by virtue of Danny Keffeler having turned the age of majority as Danny Keffeler has a right to sue individually for monetary relief and further, Plaintiffs' claim raises issues of sufficient public interest that it is desirable to have an authoritative determination which will provide future guidance for public officers, in this case the State of Washington, Department of Social and Health Services. This is particularly true under the instant circumstances wherein the State's conduct will continue and reoccur unless ordered otherwise.

NOW, THEREFORE,

IT IS HEREBY ORDERED AS FOLLOWS:

1. Plaintiffs' action is hereby certified as a Civil Rule 23(b)(2) class action.

2. The class hereby certified is defined as follows:

All foster children within the State of Washington, past, present and future in foster care that receive Title II Social Security payments for whom the State of Washington acts or has sought to act as "representative payee".

3. By virtue of this action being certified as a Civil Rule 23(b)(2) class action, no notice to the class is required.

IT IS HEREBY FURTHER ORDERED THAT Danny Keffeler ratify his inclusion and that he be named as a representative Plaintiff. In this regard Danny Keffeler may signify his ratification and be considered a named Plaintiff without further amendment of the pleadings by filing with the Court within thirty (30) days a declaration that he is informed and aware of the Court's decision concerning this matter and that he agrees to be named and participate as a named Plaintiff and has been advised by Plaintiffs' co-counsel of the responsibilities of a representative plaintiff in a class action.

IT IS FURTHER ORDERED that Defendants' motion to dismiss Plaintiffs' claim for lack of an indispensable party is hereby denied.

DATED THIS 19th day of May, 1997.

//s// Jack Burchard
Judge/~~Court Commissioner~~

Presented by:

RICHARD B. PRICE, P.S., INC.

//s//
Richard B. Price, WSBA #3203
Co-Counsel for Plaintiffs

REINBOLD and GARDNER

//s//
Rodney Reinbold, WSBA #4656
Co-Counsel for Plaintiffs

Copy received, approved as to form,
Notice of presentment waived:

CHRISTINE O. GREGOIRE, Attorney General

//s//
Debra E. Casparian, WSBA #26354
Assistant Attorney General as
Attorneys for State of Washington
Dept. of Social & Health Services

(ORDER LIST: 534 U.S.)

FRIDAY, FEBRUARY 15, 2002

ORDERS IN PENDING CASES

01A557 WA DEPT. OF SOCIAL & HEALTH SERV., ET AL. V. GUARDIANSHIP ESTATE OF DANNY KEFFELER, ET AL.

The Solicitor General is invited to file a brief in this case expressing the views of the United States on or before 3 p.m., Friday, March 1, 2002.

00-1406 ....

Supreme Court of the United States

No. 01A557

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, ET AL.,

Applicants,

v.

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, GUARDIAN, ET AL.,

---

ORDER

UPON CONSIDERATION of the application of counsel for the applicant.

IT IS ORDERED that the mandate of the Supreme Court of Washington, case No. 67680-1, issued on December 14, 2001, is recalled and stayed pending receipt of a response, due on or before February 5, 2002, and further order of the undersigned or of the Court.

/s/ Sandra D. O'Connor
Associate Justice of the Supreme Court of the United States

Dated this 29th
date of January 2002

[WASHINGTON SUPREME COURT LETTERHEAD]

January 22, 2002

Honorable Christine Gregoire
Attorney General
Ms. Debra Casparian, Asst.
P.O. Box 40123
Olympia, WA 98504-0123

Honorable Christine Gregoire
Attorney General
Mr. Lawrence Lockwood, Asst.
P.O. Box 40124
Lacey, WA 98504-0124

Honorable Christine Gregoire
Attorney General
Mr. William Collins, Asst.
P.O. Box 40100
Olympia, WA 98504-0100

Mr. Richard Price
Attorney at Law
P.O. Box 1687
Omak, WA 98841

Mr. Rodney Reinbold
Attorney at Law
P.O. Box 751
Okanogan, WA 98840

Re: Supreme Court No. 67680-1 – Guardianship Estate of Danny Keffeler, et al. v. DSHS, et al.
Court of Appeals No. 18157-0-III
Okanogan County No. 96-2-00157-2

Counsel:

The following notation order was entered on January 22, 2002, by the Supreme Court Deputy Clerk in the above entitled cause:

MOTION FOR STAY PENDING REVIEW BY THE SUPREME COURT OF THE UNITED STATES:

"Motion denied, see RAP 12.6."

/s/ Ronald R. Carpenter,
Deputy Clerk.

Sincerely,

//s//
RONALD R. CARPENTER
Deputy Clerk

RRC:jaa

§ 402. Old-age and survivors insurance benefit payments

§ 402(d).

(d) Child's insurance benefits

(1) Every child (as defined in section 416(e) of this title) of an individual entitled to old-age or disability insurance benefits, or of an individual who dies a fully or currently insured individual, if such child—

(A) has filed application for child's insurance benefits,

(B) at the time such application was filed was unmarried and (i) either had not attained the age of 18 or was a full-time elementary or secondary school student and had not attained the age of 19, or (ii) is under a disability (as defined in section 423(d) of this title) which began before he attained the age of 22, and

(C) was dependent upon such individual—

(i) if such individual is living, at the time such application was filed,

(ii) if such individual has died, at the time of such death, or

(iii) if such individual had a period of disability which continued until he became entitled to old-age or disability insurance benefits, or (if he has died) until the month of his death, at the beginning of such period of disability or at the time he became entitled to such benefits,

shall be entitled to a child's insurance benefit for each month, beginning with—

(i) in the case of a child (as so defined) of such an individual who has died, the first month in which such child meets the criteria specified in subparagraphs (A), (B), and (C), or

(ii) in case of a child (as so defined) of an individual entitled to an old- age insurance benefit or to a disability insurance benefit, the first month throughout which such child is a child (as so defined) and meets the criteria specified in subparagraphs (B) and (C) (if in such month he meets the criterion specified in subparagraph (A)), whichever is earlier, and ending with the month preceding whichever of the following first occurs—

(D) the month in which such child dies or marries,

(E) the month in which such child attains the age of 18, but only if he (i) is not under a disability (as so defined) at the time he attains such age, and (ii) is not a full-time elementary or secondary school student during any part of such month,

(F) if such child was not under a disability (as so defined) at the time he attained the age of 18, the earlier of—

(i) the first month during no part of which he is a full-time elementary or secondary school student, or

(ii) the month in which he attains the age of 19,

but only if he was not under a disability (as so defined) in such earlier month;

(G) if such child was under a disability (as so defined) at the time he attained the age of 18 or if he was not under a disability (as so defined) at such time but was under a disability (as so defined) at or prior to the time he attained (or would attain) the age of 22—

(i) the termination month, subject to section 423(e) of this title (and for purposes of this subparagraph, the termination month for any individual shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 422(c)(4)(A) of this title, the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 36 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity), or (if later) the earlier of—

(ii) the first month during no part of which he is a full-time elementary or secondary school student, or

(iii) the month in which he attains the age of 19,

but only if he was not under a disability (as so defined) in such earlier month; or

(H) if the benefits under this subsection are based on the wages and self- employment income of a stepparent who is subsequently divorced from such child's natural parent, the month after the month in which such divorce becomes final.

Entitlement of any child to benefits under this subsection on the basis of the wages and self-employment income of an individual entitled to disability insurance benefits shall also end with the month before the first month for which such individual is not entitled to such benefits unless such individual is, for such later month, entitled to old-age insurance benefits or unless he dies in such month. No payment under this paragraph may be made to a child who would not meet the definition of disability in section 423(d) of this title except for paragraph (1)(B) thereof for any month in which he engages in substantial gainful activity.

(2) Such child's insurance benefit for each month shall, if the individual on the basis of whose wages and self-employment income the child is entitled to such benefit has not died prior to the end of such month, be equal to one-half of the primary insurance amount of such individual for such month. Such child's insurance benefit for each month shall, if such individual has died in or prior to such month, be equal to three-fourths of the primary insurance amount of such individual.

(3) A child shall be deemed dependent upon his father or adopting father or his mother or adopting mother at the time specified in paragraph (1)(C) of this subsection unless, at

such time, such individual was not living with or contributing to the support of such child and—

(A) such child is neither the legitimate nor adopted child of such individual, or

(B) such child has been adopted by some other individual.

For purposes of this paragraph, a child deemed to be a child of a fully or currently insured individual pursuant to section 416(h)(2)(B) or section 416(h)(3) of this title shall be deemed to be the legitimate child of such individual.

(4) A child shall be deemed dependent upon his stepfather or stepmother at the time specified in paragraph (1)(C) of this subsection if, at such time, the child was receiving at least one-half of his support from such stepfather or stepmother.

(5) In the case of a child who has attained the age of eighteen and who marries—

(A) an individual entitled to benefits under subsection (a), (b), (c), (e), (f), (g), or (h) of this section or under section 423(a) of this title, or

(B) another individual who has attained the age of eighteen and is entitled to benefits under this subsection, such child's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) of this subsection but subject to subsection (s) of this section, not be terminated by reason of such marriage.

(6) A child whose entitlement to child's insurance benefits on the basis of the wages and self-employment income of an insured individual terminated with the month preceding the month in which such child attained the age of 18, or with a subsequent month, may again become entitled to such benefits (provided no event specified in paragraph (1)(D) has occurred) beginning with the first month thereafter in which he—

(A)(i) is a full-time elementary or secondary school student and has not attained the age of 19, or (ii) is under a disability (as defined in section 423(d) of this title) and has not attained the age of 22, or

(B) is under a disability (as so defined) which began before the close of the 84th month following the month in which his most recent entitlement to child's insurance benefits terminated because he ceased to be under such disability,but only if he has filed application for such reentitlement. Such reentitlement shall end with the month preceding whichever of the following first occurs:

(C) the first month in which an event specified in paragraph (1)(D) occurs;

(D) the earlier of (i) the first month during no part of which he is a full- time elementary or secondary school student or (ii) the month in which he attains the age of 19, but only if he is not under a disability (as so defined) in such earlier month; or

(E) if he was under a disability (as so defined), the termination month (as defined in paragraph (1)(G)(i)),

subject to section 423(e) of this title or (if later) the earlier of—

(i) the first month during no part of which he is a full-time elementary or secondary school student, or

(ii) the month in which he attains the age of 19.

(7) For the purposes of this subsection—

(A) A "full-time elementary or secondary school student" is an individual who is in full-time attendance as a student at an elementary or secondary school, as determined by the Commissioner of Social Security (in accordance with regulations prescribed by the Commissioner) in the light of the standards and practices of the schools involved, except that no individual shall be considered a "full-time elementary or secondary school student" if he is paid by the his employer while attending an elementary or secondary school at the request, or pursuant to a requirement, of his employer. An individual shall not be considered a "full-time elementary or secondary school student" for the purpose of this section while that individual is confined in a jail, prison, or other penal institution or correctional facility, pursuant to his conviction of an offense (committed after the effective date of this sentence) which constituted a felony under applicable law. An individual who is determined to be a full-time elementary or secondary school student shall be deemed to be such a student throughout the month with respect to which such determination is made.

(B) Except to the extent provided in such regulations, an individual shall be deemed to be a full-time elementary or secondary school student during any period of nonattendance

at an elementary or secondary school at which he has been in full-time attendance if (i) such period is 4 calendar months or less, and (ii) he shows to the satisfaction of the Commissioner of Social Security that he intends to continue to be in full-time attendance at an elementary or secondary school immediately following such period. An individual who does not meet the requirement of clause (ii) with respect to such period of nonattendance shall be deemed to have met such requirement (as of the beginning of such period) if he is in full-time attendance at an elementary or secondary school immediately following such period.

(C)(i) An "elementary or secondary school" is a school which provides elementary or secondary education, respectively, as determined under the law of the State or other jurisdiction in which it is located.

(ii) For the purpose of determining whether a child is a "full-time elementary or secondary school student" or "intends to continue to be in full- time attendance at an elementary or secondary school", within the meaning of this subsection, there shall be disregarded any education provided, or to be provided, beyond grade 12.

(D) A child who attains age 19 at a time when he is a full-time elementary or secondary school student (as defined in subparagraph (A) of this paragraph and without application of subparagraph (B) of such paragraph) but has not (at such time completed the requirements for, or received, a diploma or equivalent certificate from a secondary school (as defined in subparagraph (C)(i)) shall be deemed (for purposes of determining whether his entitlement to benefits under this subsection has terminated under paragraph (1)(F) and for purposes of determining his initial entitlement to such

benefits under clause (i) of paragraph (1)(B)) not to have attained such age until the first day of the first month following the end of the quarter or semester in which he is enrolled at such time (or, if the elementary or secondary school (as defined in this paragraph) in which he is enrolled is not operated on a quarter or semester system, until the first day of the first month following the completion of the course in which he is so enrolled or until the first day of the third month beginning after such time, whichever first occurs).

(8) In the case of—

(A) an individual entitled to old-age insurance benefits (other than an individual referred to in subparagraph (B)), or

(B) an individual entitled to disability insurance benefits, or an individual entitled to old-age insurance benefits who was entitled to disability insurance benefits for the month preceding the first month for which he was entitled to old-age insurance benefits, a child of such individual adopted after such individual became entitled to such old-age or disability insurance benefits shall be deemed not to meet the requirements of clause (i) or (iii) of paragraph (1)(C) unless such child—

(C) is the natural child or stepchild of such individual (including such a child who was legally adopted by such individual), or

(D)(i) was legally adopted by such individual in an adoption decreed by a court of competent jurisdiction within the United States, and

(ii) in the case of a child who attained the age of 18 prior to the commencement of proceedings for adoption, the child was living with or receiving at least one-half of the child's support from such individual for the year immediately preceding the month in which the adoption is decreed.

(9) (A) A child who is a child of an individual under clause (3) of the first sentence of section 416(e) of this title and is not a child of such individual under clause (1) or (2) of such first sentence shall be deemed not to be dependent on such individual at the time specified in subparagraph (1)(C) of this subsection unless (i) such child was living with such individual in the United States and receiving at least one-half of his support from such individual (I) for the year immediately before the month in which such individual became entitled to old-age insurance benefits or disability insurance benefits or died, or (II) if such individual had a period of disability which continued until he had become entitled to old-age insurance benefits, or disability insurance benefits, or died, for the year immediately before the month in which such period of disability began, and (ii) the period during which such child was living with such individual began before the child attained age 18.

(B) In the case of a child who was born in the one-year period during which such child must have been living with and receiving at least one-half of his support from such individual, such child shall be deemed to meet such requirements for such period if, as of the close of such period, such child has lived with such individual in the United States and received at least one-half of his support from such individual for substantially all of the period which begins on the date of such child's birth.

(10) For purposes of paragraph (1)(H)—

(A) each stepparent shall notify the Commissioner of Social Security of any divorce upon such divorce becoming final; and

(B) the Commissioner shall annually notify any stepparent of the rule for termination described in paragraph (1)(H) and of the requirement described in subparagraph (A).

§ 405. Evidence, procedure, and certification for payments

§ 405(a).

(a) Rules and regulations; procedures

The Commissioner of Social Security shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this subchapter, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder.

§ 405(j).

(j) Representative payees

(1) (A) If the Commissioner of Social Security determines that the interest of any individual under this subchapter, would be served thereby, certification of payment of such individual's benefit under this subchapter may be made, regardless of the legal competency or incompetency of the individual, either for direct payment to the individual, or for his or her use and benefit, to another individual, or an organization, with respect to whom the requirements of paragraph (2) have been met (hereinafter in this subsection referred to as the individual's "representative payee"). If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee has misused any individual's benefit paid to such representative payee pursuant to this subsection or section 1007 or 1383(a)(2) of this title, the Commissioner of Social Security shall promptly revoke certification for payment of benefits to such representative payee pursuant to this subsection and certify payment to an alternative representative payee or, if the interest of the individual under this subchapter would be served thereby, to the individual.

(B) In the case of an individual entitled to benefits based on disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug addiction condition (as determined by the Commissioner) and the individual is incapable of managing such benefits.

(2) (A) Any certification made under paragraph (1) for payment of benefits to an individual's representative payee shall be made on the basis of—

(i) an investigation by the Commissioner of Social Security of the person to serve as representative payee, which shall be conducted in advance of such certification and shall, to the extent practicable, include a face-to-face interview with such person, and

(ii) adequate evidence that such certification is in the interest of such individual (as determined by the Commissioner of Social Security in regulations).

(B) (i) As part of the investigation referred to in subparagraph (A)(i), the Commissioner of Social Security shall—

(I) require the person being investigated to submit documented proof of the identity of such person, unless information establishing such identity has been submitted with an application for benefits under this subchapter, subchapter VIII of this chapter [42 U.S.C.A. S 1001 et seq.], or subchapter XVI of this chapter [42 U.S.C.A. S 1381 et seq.],

(II) verify such person's social security account number (or employer identification number),

(III) determine whether such person has been convicted of a violation of section 408, 1011, or 1383a of this title, and

(IV) determine whether certification of payment of benefits to such person has been revoked pursuant to this subsection, the designation of such person as a representative payee has been revoked pursuant to section 1007(a) of this title, or payment of benefits to such person has been terminated pursuant to section 1383(a)(2)(A)(iii) of this title by reason of misuse of funds paid as benefits under this subchapter, subchapter VIII of this chapter [42 U.S.C.A. S 1001 et seq.], or subchapter XVI of this chapter.

(ii) The Commissioner of Social Security shall establish and maintain a centralized file, which shall be updated periodically and which shall be in a form which renders it readily retrievable by each servicing office of the Social Security Administration. Such file shall consist of—

(I) a list of the names and social security account numbers (or employer identification numbers) of all persons with respect to whom certification of payment of benefits has been revoked on or after January 1, 1991, pursuant to this subsection, whose designation as a representative payee has been revoked pursuant to section 1007(a) of this title, or with respect to whom payment of benefits has been terminated on or after such date pursuant to section 1383(a)(2)(A)(iii) of this title, by reason of misuse of funds paid as benefits under this subchapter, subchapter VIII of this chapter [42 U.S.C.A. S 1001 et seq.], or subchapter XVI of this chapter, and

(II) a list of the names and social security account numbers (or employer identification numbers) of all persons who have been convicted of a violation of section 408, 1011 of this title, or 1383a of this title.

(C) (i) Benefits of an individual may not be certified for payment to any other person pursuant to this subsection if—

(I) such person has previously been convicted as described in subparagraph (B)(i)(III),

(II) except as provided in clause (ii), certification of payment of benefits to such person under this subsection has previously been revoked as described in subparagraph (B)(i)(IV), the designation of such person as a representative payee has been revoked pursuant to section 1007(a) of this title, or payment of benefits to such person pursuant to section 1383(a)(2)(A)(ii) of this title has previously been terminated as described in section 1383(a)(2)(B)(ii)(IV) of this title, or

(III) except as provided in clause (iii), such person is a creditor of such individual who provides such individual with goods or services for consideration.

(ii) The Commissioner of Social Security shall prescribe regulations under which the Commissioner of Social Security may grant exemptions to any person from the provisions of clause (i)(II) on a case-by-case basis if such exemption is in the best interest of the individual whose benefits would be paid to such person pursuant to this subsection.

(iii) Clause (i)(III) shall not apply with respect to any person who is a creditor referred to therein if such creditor is—

(I) a relative of such individual if such relative resides in the same household as such individual,

(II) a legal guardian or legal representative of such individual,

(III) a facility that is licensed or certified as a care facility under the law of a State or a political subdivision of a State,

(IV) a person who is an administrator, owner, or employee of a facility referred to in subclause (III) if such individual resides in such facility, and the certification of payment to such facility or such person is made only after good faith efforts have been made by the local servicing office of the Social Security Administration to locate an alternative representative payee to whom such certification of payment would serve the best interests of such individual, or

(V) an individual who is determined by the Commissioner of Social Security, on the basis of written findings and under procedures which the Commissioner of Social Security shall prescribe by regulation, to be acceptable to serve as a representative payee.

(iv) The procedures referred to in clause (iii)(V) shall require the individual who will serve as representative payee to establish, to the satisfaction of the Commissioner of Social Security, that—

(I) such individual poses no risk to the beneficiary,

(II) the financial relationship of such individual to the beneficiary poses no substantial conflict of interest, and

(III) no other more suitable representative payee can be found.

(v) In the case of an individual described in paragraph (1)(B), when selecting such individual's representative payee, preference shall be given to—

(I) a community-based nonprofit social service agency licensed or bonded by the State,

(II) a Federal, State, or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities,

(III) a State or local government agency with fiduciary responsibilities, or

(IV) a designee of an agency (other than of a Federal agency) referred to in the preceding subclauses of this clause, if the Commissioner of Social Security deems it appropriate, unless the Commissioner of Social Security determines that selection of a family member would be appropriate.

(D)(i) Subject to clause (ii), if the Commissioner of Social Security makes a determination described in the first sentence of paragraph (1) with respect to any individual's benefit and determines that direct payment of the benefit to the individual would cause substantial harm to the individual, the Commissioner of Social Security may defer (in the case of initial entitlement) or suspend (in the case of existing entitlement) direct payment of such benefit to the individual, until such time as the selection of a representative payee is made pursuant to this subsection.

(ii) (I) Except as provided in subclause (II), any deferral or suspension of direct payment of a benefit pursuant to clause (i) shall be for a period of not more than 1 month.

(II) Subclause (I) shall not apply in any case in which the individual is, as of the date of the Commissioner's determination, legally incompetent, under the age of 15 years, or described in paragraph (1)(B).

(iii) Payment pursuant to this subsection of any benefits which are deferred or suspended pending the selection of a representative payee shall be made to the individual or the representative payee as a single sum or over such period of time as the Commissioner of Social Security determines is in the best interest of the individual entitled to such benefits.

(E)(i) Any individual who is dissatisfied with a determination by the Commissioner of Social Security to certify payment of such individual's benefit to a representative payee under paragraph (1) or with the designation of a particular person to serve as representative payee shall be entitled to a hearing by the Commissioner of Social Security to the same extent as is provided in subsection (b) of this section, and to judicial review of the Commissioner's final decision as is provided in subsection (g) of this section.

(ii) In advance of the certification of payment of an individual's benefit to a representative payee under paragraph (1), the Commissioner of Social Security shall provide written notice of the Commissioner's initial determination to certify such payment. Such notice shall be provided to such individual, except that, if such individual—

(I) is under the age of 15,

(II) is an unemancipated minor under the age of 18, or

(III) is legally incompetent,

then such notice shall be provided solely to the legal guardian or legal representative of such individual.

(iii) Any notice described in clause (ii) shall be clearly written in language that is easily understandable to the reader, shall identify the person to be designated as such individual's representative payee, and shall explain to the reader the right under clause (i) of such individual or of such individual's legal guardian or legal representative—

(I) to appeal a determination that a representative payee is necessary for such individual,

(II) to appeal the designation of a particular person to serve as the representative payee of such individual, and

(III) to review the evidence upon which such designation is based and submit additional evidence.

(3) (A) In any case where payment under this subchapter is made to a person other than the individual entitled to such payment, the Commissioner of Social Security shall establish a system of accountability monitoring whereby such person shall report not less often than annually with respect to the use of such payments. The Commissioner of Social Security shall establish and implement statistically valid procedures for reviewing such reports in order to identify instances in which such persons are not properly using such payments.

(B) Subparagraph (A) shall not apply in any case where the other person to whom such payment is made is a State institution. In such cases, the Commissioner of Social Security shall establish a system of accountability monitoring for institutions in each State.

(C) Subparagraph (A) shall not apply in any case where the individual entitled to such payment is a resident of a Federal institution and the other person to whom such payment is made is the institution.

(D) Notwithstanding subparagraphs (A), (B), and (C), the Commissioner of Social Security may require a report at any time from any person receiving payments on behalf of another, if the Commissioner of Social Security has reason to believe that the person receiving such payments is misusing such payments.

(E) The Commissioner of Social Security shall maintain a centralized file, which shall be updated periodically and which shall be in a form which will be readily retrievable by each servicing office of the Social Security Administration, of—

(i) the address and the social security account number (or employer identification number) of each representative payee who is receiving benefit payments pursuant to this subsection, section 1007 of this title, or section 1383(a)(2) of this title, and

(ii) the address and social security account number of each individual for whom each representative payee is reported to be providing services as representative payee pursuant to this subsection, section 1007 of this title, or section 1383(a)(2) of this title.

(F) Each servicing office of the Administration shall maintain a list, which shall be updated periodically, of public agencies and community-based nonprofit social service agencies which are qualified to serve as representative payees pursuant to this subsection or section 1007 of this title or 1383(a)(2) of this title and which are located in the area served by such servicing office.

(4) (A)(i) A qualified organization may collect from an individual a monthly fee for expenses (including overhead) incurred by such organization in providing services performed as such individual's representative payee pursuant to this subsection if such fee does not exceed the lesser of—

(I) 10 percent of the monthly benefit involved, or

(II) $25.00 per month ($50.00 per month in any case in which the individual is described in paragraph (1)(B)).

The Commissioner of Social Security shall adjust annually (after 1995) each dollar amount set forth in subclause (II) under procedures providing for adjustments in the same manner and to the same extent as adjustments are provided for under the procedures used to adjust benefit amounts under section 415(i)(2)(A) of this title, except that any amount so adjusted that is not a multiple of $1.00 shall be rounded to the nearest multiple of $1.00.

Any agreement providing for a fee in excess of the amount permitted under this subparagraph shall be void and shall be treated as misuse by such organization of such individual's benefits.

(ii) In the case of an individual who is no longer currently entitled to monthly insurance benefits under this subchapter but to whom all past-due benefits have not been paid, for purposes of clause (i), any amount of such past-due benefits payable in any month shall be treated as a monthly benefit referred to in clause (i)(I).

(B) For purposes of this paragraph, the term "qualified organization" means any State or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities, any State or local government agency with fiduciary responsibilities, or any community-based nonprofit social service agency which is bonded or licensed in each State in which it serves as a representative payee, if such agency, in accordance with any applicable regulations of the Commissioner of Social Security—

(i) regularly provides services as the representative payee, pursuant to this subsection or section

1007 of this title or 1383(a)(2) of this title, concurrently to 5 or more individuals,

(ii) demonstrates to the satisfaction of the Commissioner of Social Security that such agency is not otherwise a creditor of any such individual.

(iii) Repealed. Pub.L. 103-296, Title II, S 201(a)(2)(B)(ii)(IV), Aug. 15, 1994, 108 Stat. 1493

The Commissioner of Social Security shall prescribe regulations under which the Commissioner of Social Security may grant an exception from clause (ii) for any individual on a case-by-case basis if such exception is in the best interests of such individual.

(C) Any qualified organization which knowingly charges or collects, directly or indirectly, any fee in excess of the maximum fee prescribed under subparagraph (A) or makes any agreement, directly or indirectly, to charge or collect any fee in excess of such maximum fee, shall be fined in accordance with Title 18, or imprisoned not more than 6 months, or both.

(D) Repealed. Pub.L. 103-296, Title II, S 201(a)(2)(B)(iii), Aug. 15, 1994, 108 Stat. 1493

(5) In cases where the negligent failure of the Commissioner of Social Security to investigate or monitor a representative payee results in misuse of benefits by the representative payee, the Commissioner of Social Security shall certify for payment to the beneficiary or the beneficiary's alternative representative payee an amount equal to such misused benefits. The Commissioner of Social

Security shall make a good faith effort to obtain restitution from the terminated representative payee.

(6) The Commissioner of Social Security shall include as a part of the annual report required under section 904 of this title information with respect to the implementation of the preceding provisions of this subsection, including the number of cases in which the representative payee was changed, the number of cases discovered where there has been a misuse of funds, how any such cases were dealt with by the Commissioner of Social Security, the final disposition of such cases, including any criminal penalties imposed, and such other information as the Commissioner of Social Security determines to be appropriate.

(7) For purposes of this subsection, the term "benefit based on disability" of an individual means a disability insurance benefit of such individual under section 423 of this title or a child's, widow's, or widower's insurance benefit of such individual under section 402 of this title based on such individual's disability.

§ 407. Assignment; amendment of section

(a) The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

(b) No other provision of law, enacted before, on, or after April 20, 1983, may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section.

(c) Nothing in this section shall be construed to prohibit withholding taxes from any benefit under this subchapter, if such withholding is done pursuant to a request made in accordance with section 3402(p)(1) of the Internal Revenue Code of 1986 [26 U.S.C.A. S 3402] by the person entitled to such benefit or such person's representative payee.

§ 408. Penalties.

(a) In general

Whoever--

(1) for the purpose of causing an increase in any payment authorized to be made under this subchapter, or for the purpose of causing any payment to be made where no payment is authorized under this subchapter, shall make or cause to be made any false statement or representation (including any false statement or representation in connection with any matter arising under subchapter E of chapter 1, or subchapter A or E of chapter 9 of the Internal Revenue Code of 1939, or chapter 2 or 21 or subtitle F of Title 26) as to—

(A) whether wages were paid or received for employment (as said terms are defined in this subchapter and Title 26), or the amount of wages or the period during which paid or the person to whom paid; or

(B) whether net earnings from self-employment (as such term is defined in this subchapter and in Title 26) were derived, or as to the amount of such net earnings or the period during which or the person by whom derived; or

(C) whether a person entitled to benefits under this subchapter had earnings in or for a particular period (as determined under section 403(f) of this title for purposes of deductions from benefits), or as to the amount thereof; or

(2) makes or causes to be made any false statement or representation of a material fact in any application for any

payment or for a disability determination under this subchapter; or

(3)at any time makes or causes to be made any false statement or representation of a material fact for use in determining rights to payment under this subchapter; or

(4) having knowledge of the occurrence of any event affecting (1) his initial or continued right to any payment under this subchapter, or (2) the initial or continued right to any payment of any other individual in whose behalf he has applied for or is receiving such payment, conceals or fails to disclose such event with an intent fraudulently to secure payment either in a greater amount than is due or when no payment is authorized; or

(5) having made application to receive payment under this subchapter for the use and benefit of another and having received such a payment, knowingly and willfully converts such a payment, or any part thereof, to a use other than for the use and benefit of such other person; or

(6) willfully, knowingly, and with intent to deceive the Commissioner of Social Security as to his true identity (or the true identity of any other person) furnishes or causes to be furnished false information to the Commissioner of Social Security with respect to any information required by the Commissioner of Social Security in connection with the establishment and maintenance of the records provided for in section 405(c)(2) of this title; or

(7) for the purpose of causing an increase in any payment authorized under this subchapter (or any other program financed in whole or in part from Federal funds), or for the

purpose of causing a payment under this subchapter (or any such other program) to be made when no payment is authorized thereunder, or for the purpose of obtaining (for himself or any other person) any payment or any other benefit to which he (or such other person) is not entitled, or for the purpose of obtaining anything of value from any person, or for any other purpose—

(A)willfully, knowingly, and with intent to deceive, uses a social security account number, assigned by the Commissioner of Social Security (in the exercise of the Commissioner's authority under section 405(c)(2) of this title to establish and maintain records) on the basis of false information furnished to the Commissioner of Social Security by him or by any other person; or

(B) with intent to deceive, falsely represents a number to be the social security account number assigned by the Commissioner of Social Security to him or to another person, when in fact such number is not the social security account number assigned by the Commissioner of Social Security to him or to such other person; or

(C) knowingly alters a social security card issued by the Commissioner of Social Security, buys or sells a card that is, or purports to be, a card so issued, counterfeits a social security card, or possesses a social security card or counterfeit social security card with intent to sell or alter it; or

(8) discloses, uses, or compels the disclosure of the social security number of any person in violation of the laws of the United States;

(9), (10) Repealed. > Pub.L. 106-554, S 1(a)(4) [Div. A, S 213(a)(6)], Dec. 21, 2000, 114 Stat. 2763, 2763A-180

shall be guilty of a felony and upon conviction thereof shall be fined under Title 18 or imprisoned for not more than five years, or both.

Any person or other entity who is convicted of a violation of any of the provisions of this section, if such violation is committed by such person or entity in his role as, or in applying to become, a certified payee under section 405(j) of this title on behalf of another individual (other than such person's spouse), upon his second or any subsequent such conviction shall, in lieu of the penalty set forth in the preceding provisions of this section, be guilty of a felony and shall be fined under Title 18 or imprisoned for not more than five years, or both. In the case of any violation described in the preceding sentence, including a first such violation, if the court determines that such violation includes a willful misuse of funds by such person or entity, the court may also require that full or partial restitution of such funds be made to the individual for whom such person or entity was the certified payee.

(b) Effect upon certification as payee

Any individual or entity convicted of a felony under this section or under section 1383a(b) of this title may not be certified as a payee under section 405(j) of this title.

(c) Definitions

For the purpose of subsection (a)(7) of this section, the terms "social security number" and "social security account

number" mean such numbers as are assigned by the Commissioner of Social Security under section 405(c)(2) of this title whether or not, in actual use, such numbers are called social security numbers.

(d) Aliens

(1)Except as provided in paragraph (2), an alien—

(A)whose status is adjusted to that of lawful temporary resident under section 1160 or 1255a of Title 8 or under section 902 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989,

(B) whose status is adjusted to that of permanent resident—

(i) under section 202 of the Immigration Reform and Control Act of 1986, or

(ii) pursuant to section 1259 of Title 8, or

(C) who is granted special immigrant status under section 1101(a)(27)(I) of Title 8,

shall not be subject to prosecution for any alleged conduct described in paragraph (6) or (7) of subsection (a) of this section if such conduct is alleged to have occurred prior to 60 days after November 5, 1990.

(2) Paragraph (1) shall not apply with respect to conduct (described in subsection (a)(7)(C) of this section) consisting of—

(A) selling a card that is, or purports to be, a social security card issued by the Commissioner of Social Security,

(B) possessing a social security card with intent to sell it, or

(C) counterfeiting a social security card with intent to sell it.

(3) Paragraph (1) shall not apply with respect to any criminal conduct involving both the conduct described in subsection (a)(7) of this section to which paragraph (1) applies and any other criminal conduct if such other conduct would be criminal conduct if the conduct described in subsection (a)(7) of this section were not committed.

§ 1381. Statement of purpose; authorization of appropriations

For the purpose of establishing a national program to provide supplemental security income to individuals who have attained age 65 or are blind or disabled, there are authorized to be appropriated sums sufficient to carry out this subchapter.

§ 1381a. Basic entitlement to benefits

Every aged, blind, or disabled individual who is determined under part A of this subchapter to be eligible on the basis of his income and resources shall, in accordance with and subject to the provisions of this subchapter, be paid benefits by the Commissioner of Social Security.

§ 1383. Procedure for payment of benefits

§ 1383(a).

(a) Time, manner, form, and duration of payments; promulgation of regulations

(1) Benefits under this subchapter shall be paid at such time or times and (subject to paragraph (10)) in such installments as will best effectuate the purposes of this subchapter, as determined under regulations (and may in any case be paid less frequently than monthly where the amount of the monthly benefit would not exceed $10).

(2) (A)(i) Payments of the benefit of any individual may be made to any such individual or to the eligible spouse (if any) of such individual or partly to each.

(ii) (I) Upon a determination by the Commissioner of Social Security that the interest of such individual would be served thereby, such payments shall be made, regardless of the legal competency or incompetency of the individual or eligible spouse, to another individual, or an organization, with respect to whom the requirements of subparagraph (B) have been met (in this paragraph referred to as such individual's "representative payee") for the use and benefit of the individual or eligible spouse.

(II) In the case of an individual eligible for benefits under this subchapter by reason of disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug

addiction condition (as determined by the Commissioner) and the individual is incapable of managing such benefits.

(iii) If the Commissioner of Social Security or a court of competent jurisdiction determines that the representative payee of an individual or eligible spouse has misused any benefits which have been paid to the representative payee pursuant to clause (ii) or section 405(j)(1) or 1007 of this title, the Commissioner of Social Security shall promptly terminate payment of benefits to the representative payee pursuant to this subparagraph, and provide for payment of benefits to an alternative representative payee of the individual or eligible spouse or, if the interest of the individual under this subchapter would be served thereby, to the individual or eligible spouse.

(B)(i) Any determination made under subparagraph (A) for payment of benefits to the representative payee of an individual or eligible spouse shall be made on the basis of—

(I) an investigation by the Commissioner of Social Security of the person to serve as representative payee, which shall be conducted in advance of such payment, and shall, to the extent practicable, include a face-to-face interview with such person; and

(II) adequate evidence that such payment is in the interest of the individual or eligible spouse (as determined by the Commissioner of Social Security in regulations).

(ii) As part of the investigation referred to in clause (i)(I), the Commissioner of Social Security shall—

(I) require the person being investigated to submit documented proof of the identity of such person, unless information establishing such identity was submitted with an application for benefits under subchapter II of this chapter [42 U.S.C.A. S 401 et seq.], subchapter VIII of this chapter [42 U.S.C.A. S 1001 et seq.], or this subchapter;

(II) verify the social security account number (or employer identification number) of such person;

(III) determine whether such person has been convicted of a violation of section 408, 1011, or 1383a of this title; and

(IV) determine whether payment of benefits to such person has been terminated pursuant to subparagraph (A)(iii), whether the designation of such person as a representative payee has been revoked pursuant to section 1007(a) of this title, and whether certification of payment of benefits to such person has been revoked pursuant to section 405(j) of this title, by reason of misuse of funds paid as benefits under subchapter II of this chapter [42 U.S.C.A. S 401 et seq.], subchapter VIII of this chapter [42 U.S.C.A. S 1001 et seq.], or this subchapter.

(iii) Benefits of an individual may not be paid to any other person pursuant to subparagraph (A)(ii) if—

(I) such person has previously been convicted as described in clause (ii)(III);

(II) except as provided in clause (iv), payment of benefits to such person pursuant to subparagraph (A)(ii) has previously been terminated as described in clause

(ii)(IV), the designation of such person as a representative payee has been revoked pursuant to section 1007(a) of this title, or certification of payment of benefits to such person under section 405(j) of this title has previously been revoked as described in section 405(j)(2)(B)(i)(IV) of this title; or

(III) except as provided in clause (v), such person is a creditor of such individual who provides such individual with goods or services for consideration.

(iv) The Commissioner of Social Security shall prescribe regulations under which the Commissioner of Social Security may grant an exemption from clause (iii)(II) to any person on a case-by-case basis if such exemption would be in the best interest of the individual or eligible spouse whose benefits under this subchapter would be paid to such person pursuant to subparagraph (A)(ii).

(v) Clause (iii)(III) shall not apply with respect to any person who is a creditor referred to therein if such creditor is—

(I) a relative of such individual if such relative resides in the same household as such individual;

(II) a legal guardian or legal representative of such individual;

(III) a facility that is licensed or certified as a care facility under the law of a State or a political subdivision of a State;

(IV) a person who is an administrator, owner, or employee of a facility referred to in subclause (III) if such

individual resides in such facility, and the payment of benefits under this subchapter to such facility or such person is made only after good faith efforts have been made by the local servicing office of the Social Security Administration to locate an alternative representative payee to whom the payment of such benefits would serve the best interests of such individual; or

(V) an individual who is determined by the Commissioner of Social Security, on the basis of written findings and under procedures which the Commissioner of Social Security shall prescribe by regulation, to be acceptable to serve as a representative payee.

(vi) The procedures referred to in clause (v)(V) shall require the individual who will serve as representative payee to establish, to the satisfaction of the Commissioner of Social Security, that—

(I) such individual poses no risk to the beneficiary;

(II) the financial relationship of such individual to the beneficiary poses no substantial conflict of interest; and

(III) no other more suitable representative payee can be found.

(vii) In the case of an individual described in subparagraph (A)(ii)(II), when selecting such individual's representative payee, preference shall be given to—

(I) a community-based nonprofit social service agency licensed or bonded by the State;

(II) a Federal, State, or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities;

(III) a State or local government agency with fiduciary responsibilities; or

(IV) a designee of an agency (other than of a Federal agency) referred to in the preceding subclauses of this clause, if the Commissioner of Social Security deems it appropriate,
unless the Commissioner of Social Security determines that selection of a family member would be appropriate.

(viii) Subject to clause (ix), if the Commissioner of Social Security makes a determination described in subparagraph (A)(ii) with respect to any individual's benefit and determines that direct payment of the benefit to the individual would cause substantial harm to the individual, the Commissioner of Social Security may defer (in the case of initial entitlement) or suspend (in the case of existing entitlement) direct payment of such benefit to the individual, until such time as the selection of a representative payee is made pursuant to this subparagraph.

(ix)(I) Except as provided in subclause (II), any deferral or suspension of direct payment of a benefit pursuant to clause (viii) shall be for a period of not more than 1 month.

(II) Subclause (I) shall not apply in any case in which the individual or eligible spouse is, as of the date of

the Commissioner's determination, legally incompetent, under the age of 15 years, or described in subparagraph (A)(ii)(II).

(x) Payment pursuant to this subparagraph of any benefits which are deferred or suspended pending the selection of a representative payee shall be made to the individual, or to the representative payee upon such selection, as a single sum or over such period of time as the Commissioner of Social Security determines is in the best interests of the individual entitled to such benefits.

(xi) Any individual who is dissatisfied with a determination by the Commissioner of Social Security to pay such individual's benefits to a representative payee under this subchapter, or with the designation of a particular person to serve as representative payee, shall be entitled to a hearing by the Commissioner of Social Security, and to judicial review of the Commissioner's final decision, to the same extent as is provided in subsection (c) of this section.

(xii) In advance of the first payment of an individual's benefit to a representative payee under subparagraph (A)(ii), the Commissioner of Social Security shall provide written notice of the Commissioner's initial determination to make any such payment. Such notice shall be provided to such individual, except that, if such individual—

(I) is under the age of 15,

(II) is an unemancipated minor under the age of 18, or

(III) is legally incompetent,

then such notice shall be provided solely to the legal guardian or legal representative of such individual.

(xiii) Any notice described in clause (xii) shall be clearly written in language that is easily understandable to the reader, shall identify the person to be designated as such individual's representative payee, and shall explain to the reader the right under clause (xi) of such individual or of such individual's legal guardian or legal representative—

(I) to appeal a determination that a representative payee is necessary for such individual,

(II) to appeal the designation of a particular person to serve as the representative payee of such individual, and

(III) to review the evidence upon which such designation is based and submit additional evidence.

(C) (i) In any case where payment is made under this subchapter to a representative payee of an individual or spouse, the Commissioner of Social Security shall establish a system of accountability monitoring whereby such person shall report not less often than annually with respect to the use of such payments. The Commissioner of Social Security shall establish and implement statistically valid procedures for reviewing such reports in order to identify instances in which such persons are not properly using such payments.

(ii) Clause (i) shall not apply in any case where the representative payee is a State institution. In such cases,

the Commissioner of Social Security shall establish a system of accountability monitoring for institutions in each State.

(iii) Clause (i) shall not apply in any case where the individual entitled to such payment is a resident of a Federal institution and the representative payee is the institution.

(iv) Notwithstanding clauses (i), (ii), and (iii), the Commissioner of Social Security may require a report at any time from any representative payee, if the Commissioner of Social Security has reason to believe that the representative payee is misusing such payments.

(D)(i) A qualified organization may collect from an individual a monthly fee for expenses (including overhead) incurred by such organization in providing services performed as such individual's representative payee pursuant to subparagraph (A)(ii) if the fee does not exceed the lesser of—

(I) 10 percent of the monthly benefit involved, or

(II) $25.00 per month ($50.00 per month in any case in which an individual is described in subparagraph (A)(ii)(II)).

The Commissioner of Social Security shall adjust annually (after 1995) each dollar amount set forth in subclause (II) of this clause under procedures providing for adjustments in the same manner and to the same extent as adjustments are provided for under the procedures used to adjust benefit amounts under section 415(i)(2)(A) of this title, except that

any amount so adjusted that is not a multiple of $1.00 shall be rounded to the nearest multiple of $1.00. Any agreement providing for a fee in excess of the amount permitted under this clause shall be void and shall be treated as misuse by the organization of such individual's benefits.

(ii) For purposes of this subparagraph, the term "qualified organization" means any State or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities, any State or local government agency with fiduciary responsibilities, or any community-based nonprofit social service agency, which—

(I) is bonded or licensed in each State in which the agency serves as a representative payee; and

(II) in accordance with any applicable regulations of the Commissioner of Social Security—

(aa) regularly provides services as a representative payee pursuant to subparagraph (A)(ii) or section 405(j)(4) or 1007 of this title concurrently to 5 or more individuals; and

(bb) demonstrates to the satisfaction of the Commissioner of Social Security that such agency is not otherwise a creditor of any such individual.

(cc) Repealed. Pub.L. 103-296, Title II, S 201(b)(2)(B)(ii)(IV)(cc), Aug. 15, 1994, 108 Stat. 1501

The Commissioner of Social Security shall prescribe regulations under which the Commissioner of Social Security

may grant an exception from subclause (II)(bb) for any individual on a case-by-case basis if such exception is in the best interests of such individual.

(iii) Any qualified organization which knowingly charges or collects, directly or indirectly, any fee in excess of the maximum fee prescribed under clause (i) or makes any agreement, directly or indirectly, to charge or collect any fee in excess of such maximum fee, shall be fined in accordance with Title 18, or imprisoned not more than 6 months, or both.

(iv) In the case of an individual who is no longer eligible for benefits under this subchapter but to whom any amount of past-due benefits under this subchapter has not been paid, for purposes of clause (i), any amount of such past-due benefits payable in any month shall be treated as a monthly benefit referred to in clause (i)(I).

(E) Restitution

In cases where the negligent failure of the Commissioner of Social Security to investigate or monitor a representative payee results in misuse of benefits by the representative payee, the Commissioner of Social Security shall make payment to the beneficiary or the beneficiary's representative payee of an amount equal to such misused benefits. The Commissioner of Social Security shall make a good faith effort to obtain restitution from the terminated representative payee.

(F) (i) (I) Each representative payee of an eligible individual under the age of 18 who is eligible for the payment of benefits described in subclause (II) shall establish on behalf of such individual an account in a financial

institution into which such benefits shall be paid, and shall thereafter maintain such account for use in accordance with clause (ii).

(II) Benefits described in this subclause are past-due monthly benefits under this subchapter (which, for purposes of this subclause, include State supplementary payments made by the Commissioner pursuant to an agreement under section 1382e of this title or section 212(b) of Public Law 93-66) in an amount (after any withholding by the Commissioner for reimbursement to a State for interim assistance under subsection (g) of this section) that exceeds the product of—

(aa) 6, and

(bb) the maximum monthly benefit payable under this subchapter to an eligible individual.

(ii) (I) A representative payee shall use funds in the account established under clause (i) to pay for allowable expenses described in subclause (II).

(II) An allowable expense described in this subclause is an expense for—

(aa) education or job skills training;

(bb) personal needs assistance;

(cc) special equipment;

(dd) housing modification;

(ee) medical treatment;

(ff) therapy or rehabilitation; or

(gg) any other item or service that the Commissioner determines to be appropriate;

provided that such expense benefits such individual and, in the case of an expense described in item (bb), (cc), (dd), (ff), or (gg), is related to the impairment (or combination of impairments) of such individual.

(III) The use of funds from an account established under clause (i) in any manner not authorized by this clause—

(aa) by a representative payee shall be considered a misapplication of benefits for all purposes of this paragraph, and any representative payee who knowingly misapplies benefits from such an account shall be liable to the Commissioner in an amount equal to the total amount of such benefits; and

(bb) by an eligible individual who is his or her own payee shall be considered a misapplication of benefits for all purposes of this paragraph and in any case in which the individual knowingly misapplies benefits from such an account, the Commissioner shall reduce future benefits payable to such individual (or to such individual and his spouse) by an amount equal to the total amount of such benefits so misapplied.

(IV) This clause shall continue to apply to funds in the account after the child has reached age 18,

regardless of whether benefits are paid directly to the beneficiary or through a representative payee.

(iii) The representative payee may deposit into the account established under clause (i) any other funds representing past due benefits under this subchapter to the eligible individual, provided that the amount of such past due benefits is equal to or exceeds the maximum monthly benefit payable under this subchapter to an eligible individual (including State supplementary payments made by the Commissioner pursuant to an agreement under section 1382e of this title or section 212(b) of Public Law 93-66).

(iv) The Commissioner of Social Security shall establish a system for accountability monitoring whereby such representative payee shall report, at such time and in such manner as the Commissioner shall require, on activity respecting funds in the account established pursuant to clause (i).

(G) The Commissioner of Social Security shall include as a part of the annual report required under section 904 [FN1] of this title information with respect to the implementation of the preceding provisions of this paragraph, including—

(i) the number of cases in which the representative payee was changed;

(ii) the number of cases discovered where there has been a misuse of funds;

(iii) how any such cases were dealt with by the Commissioner of Social Security;

(iv) the final disposition of such cases (including any criminal penalties imposed); and

(v) such other information as the Commissioner of Social Security determines to be appropriate.

(H) The Commissioner of Social Security shall make an initial report to each House of the Congress on the implementation of subparagraphs (B) and (C) within 270 days after October 9, 1984. The Commissioner of Social Security shall include in the annual report required under section 904 [FN1] of this title, information with respect to the implementation of subparagraphs (B) and (C), including the same factors as are required to be included in the Commissioner's report under section 405(j)(4)(B) of this title.

(3) The Commissioner of Social Security may by regulation establish ranges of incomes within which a single amount of benefits under this subchapter shall apply.

(4) The Commissioner of Social Security—

(A) may make to any individual initially applying for benefits under this subchapter who is presumptively eligible for such benefits for the month following the date the application is filed and who is faced with financial emergency a cash advance against such benefits, including any federally- administered State supplementary payments, in an amount not exceeding the monthly amount that would be payable to an eligible individual with no other income for the first month of such presumptive eligibility, which shall be

repaid through proportionate reductions in such benefits over a period of not more than 6 months; and

(B) may pay benefits under this subchapter to an individual applying for such benefits on the basis of disability or blindness for a period not exceeding 6 months prior to the determination of such individual's disability or blindness, if such individual is presumptively disabled or blind and is determined to be otherwise eligible for such benefits, and any benefits so paid prior to such determination shall in no event be considered overpayments for purposes of subsection (b) of this section solely because such individual is determined not to be disabled or blind.

(5) Payment of the benefit of any individual who is an aged, blind, or disabled individual solely by reason of blindness (as determined under section 1382c(a)(2) of this title) or disability (as determined under section 1382c(a)(3) of this title), and who ceases to be blind or to be under such disability, shall continue (so long as such individual is otherwise eligible) through the second month following the month in which such blindness or disability ceases.

(6) Notwithstanding any other provision of this subchapter, payment of the benefit of any individual who is an aged, blind, or disabled individual solely by reason of blindness (as determined under section 1382c(a)(2) of this title) disability (as determined under section 1382c(a)(3) of this title) shall not be terminated or suspended because the blindness or other physical or mental impairment, on which the individual's eligibility for such benefit is based, has or may have ceased, if—

(A) such individual is participating in a program consisting of the Ticket to Work and Self-Sufficiency Program under section 1320b-19 of this title or another program of vocational rehabilitation services, employment services, or other support services approved by the Commissioner of Social Security, and

(B) the Commissioner of Social Security determines that the completion of such program, or its continuation for a specified period of time, will increase the likelihood that such individual may (following his participation in such program) be permanently removed from the blindness and disability benefit rolls.

(7) (A) In any case where—

(i) an individual is a recipient of benefits based on disability or blindness under this subchapter.

(ii) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and as a consequence such individual is determined not to be entitled to such benefits, and

(iii) a timely request for review or for a hearing is pending with respect to the determination that he is not so entitled,

such individual may elect (in such manner and form and within such time as the Commissioner of Social Security shall by regulations prescribe) to have the payment of such benefits continued for an additional period beginning with the first month beginning after October 9, 1984 for which

(under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (I) the month preceding the month in which a decision is made after such a hearing, or (II) the month preceding the month in which no such request for review or a hearing is pending.

(B) (i) If an individual elects to have the payment of his benefits continued for an additional period under subparagraph (A), and the final decision of the Commissioner of Social Security affirms the determination that he is not entitled to such benefits, any benefits paid under this subchapter pursuant to such election (for months in such additional period) shall be considered overpayments for all purposes of this subchapter, except as otherwise provided in clause (ii).

(ii) If the Commissioner of Social Security determines that the individual's appeal of his termination of benefits was made in good faith, all of the benefits paid pursuant to such individual's election under subparagraph (A) shall be subject to waiver consideration under the provisions of subsection (b)(1) of this section.

(C) The provisions of subparagraphs (A) and (B) shall apply with respect to determinations (that individuals are not entitled to benefits) which are made on or after October 9, 1984, or prior to such date but only on the basis of a timely request for review or for a hearing.

(8) (A) In any case in which an administrative law judge has determined after a hearing as provided in subsection (c) of this section that an individual is entitled to benefits based on disability or blindness under this subchapter and the Commissioner of Social Security has not issued the

Commissioner's final decision in such case within 110 days after the date of the administrative law judge's determination, such benefits shall be currently paid for the months during the period beginning with the month in which such 110-day period expires and ending with the month in which such final decision is issued.

(B) For purposes of subparagraph (A), in determining whether the 110-day period referred to in subparagraph (A) has elapsed, any period of time for which the action or inaction of such individual or such individual's representative without good cause results in the delay in the issuance of the Commissioner's final decision shall not be taken into account to the extent that such period of time exceeds 20 calendar days.

(C) Any benefits currently paid under this subchapter pursuant to this paragraph (for the months described in subparagraph (A)) shall not be considered overpayments for any purposes of this subchapter, unless payment of such benefits was fraudulently obtained.

(9) Benefits under this subchapter shall not be denied to any individual solely by reason of the refusal of the individual to accept an amount offered as compensation for a crime of which the individual was a victim.

(10) (A) If an individual is eligible for past-due monthly benefits under this subchapter in an amount that (after any withholding for reimbursement to a State for interim assistance under subsection (g) of this section) equals or exceeds the product of—

(i) 12, and

(ii) the maximum monthly benefit payable under this subchapter to an eligible individual (or, if appropriate, to an eligible individual and eligible spouse),

then the payment of such past-due benefits (after any such reimbursement to a State) shall be made in installments as provided in subparagraph (B).

(B) (i) The payment of past-due benefits subject to this subparagraph shall be made in not to exceed 3 installments that are made at 6-month intervals.

(ii) Except as provided in clause (iii), the amount of each of the first and second installments may not exceed an amount equal to the product of clauses (i) and (ii) of subparagraph (A).

(iii) In the case of an individual who has—

(I) outstanding debt attributable to—

(aa) food,

(bb) clothing,

(cc) shelter, or

(dd) medically necessary services, supplies or equipment, or medicine; or

(II) current expenses or expenses anticipated in the near term attributable to—

(aa) medically necessary services, supplies or equipment, or medicine, or

(bb) the purchase of a home, and

such debt or expenses are not subject to reimbursement by a public assistance program, the Secretary under subchapter XVIII of this chapter [42 U.S.C.A. S 1395 et seq.], a State plan approved under subchapter XIX of this chapter [42 U.S.C.A. S 1396 et seq.], or any private entity legally liable to provide payment pursuant to an insurance policy, pre-paid plan, or other
arrangement, the limitation specified in clause (ii) may be exceeded by an amount equal to the total of such debt and expenses.

(C) This paragraph shall not apply to any individual who, at the time of the Commissioner's determination that such individual is eligible for the payment of past-due monthly benefits under this subchapter—

(i) is afflicted with a medically determinable impairment that is expected to result in death within 12 months; or

(ii) is ineligible for benefits under this subchapter and the Commissioner determines that such individual is likely to remain ineligible for the next 12 months.

(D) For purposes of this paragraph, the term "benefits under this subchapter" includes supplementary payments pursuant to an agreement for Federal administration under section 1382e(a) of this title, and payments pursuant to an agreement entered into under section 212(b) of Public Law 93-66.

§ 1383(d).

(d) Procedures applicable; prohibition on assignment of payments; representation of claimants

(1) The provisions of section 407 of this title and subsections (a), (d), and (e) of section 405 of this title shall apply with respect to this part to the same extent as they apply in the case of subchapter II of this chapter [42 U.S.C.A. S 401 et seq.].

(2) (A) The provisions of section 406(a) of this title (other than paragraph (4) thereof) shall apply to this part to the same extent as they apply in the case of subchapter II of this chapter [42 U.S.C.A. S 401 et seq.], except that paragraph (2) thereof shall be applied—

(i) by substituting, in subparagraphs (A)(ii)(I) and (C)(i), the phrase "(as determined before any applicable reduction under section 1383(g) of this title, and reduced by the amount of any reduction in benefits under this subchapter or subchapter II of this chapter [42 U.S.C.A. S 401 et seq.] made pursuant to section 1320a-6(a) of this title)" for the parenthetical phrase contained therein; and

(ii) by substituting "section 1383(a)(7)(A) of this title or the requirements of due process of law" for "subsection (g) or (h) of section 423 of this title".

(B) The Commissioner of Social Security shall notify each claimant in writing, together with the notice to such claimant of an adverse determination, of the options for obtaining attorneys to represent individuals in presenting their cases before the Commissioner of Social Security. Such notification shall also advise the claimant of the availability to qualifying claimants of legal services organizations which provide legal services free of charge.

§ 1383(j).

(j) Application and review requirements for certain individuals

(1) Notwithstanding any provision of section 1382 or 1382h of this title, any individual who—

(A) was an eligible individual (or eligible spouse) under section 1382 of this title or was eligible for benefits under or pursuant to section 1382h of this title, and

(B) who, after such eligibility, is ineligible for benefits under or pursuant to both such sections for a period of 12 consecutive months,

may not thereafter become eligible for benefits under or pursuant to either such section until the individual has reapplied for benefits under section 1382 of this title and been determined to be eligible for benefits under such section, or has filed a request for reinstatement of eligibility under subsection (p)(2) and been determined to be eligible for reinstatement.

(2) (A) Notwithstanding any provision of section 1382 of this title or section 1382h of this title (other than subsection (c) thereof), any individual who was eligible for benefits pursuant to section 1382h(b) of this title, and who—

(i) (I) on the basis of the same impairment on which his or her eligibility under such section 1382h(b) of this title was based becomes eligible (other than pursuant to a request for reinstatement under subsection (p)) for benefits under section 1382 or 1382h(a) of this title for a month that

follows a period during which the individual was ineligible for benefits under sections 1382 and 1382h(a) of this title, and

(II) has earned income (other than income excluded pursuant to section 1382a(b) of this title) for any month in the 12-month period preceding such month that is equal to or in excess of the amount that would cause him or her to be ineligible for payments under section 1382(b) of this title for that month (if he or she were otherwise eligible for such payments); or

(ii) (I) on the basis of the same impairment on which his or her eligibility under such section 1382h(b) of this title was based becomes eligible under section 1382h(b) of this title for a month that follows a period during which the individual was ineligible under section 1382 of this title and 1382h of this title, and

(II) has earned income (other than income excluded pursuant to section 1382a(b) of this title) for such month or for any month in the 12-month period preceding such month that is equal to or in excess of the amount that would cause him or her to be ineligible for payments under section 1382(b) of this title for that month (if he or she were otherwise eligible for such payments);

shall, upon becoming eligible (as described in clause (i)(I) or (ii)(I)), be subject to a prompt review of the type described in section 1382c(a)(4) of this title.

(B) If the Commissioner of Social Security determines pursuant to a review required by subparagraph (A) that the impairment upon which the eligibility of an individual is based has ceased, does not exist, or is not disabling, such individual may not thereafter become eligible for a benefit under or pursuant to section 1382 of this title or section 1382h of this title until the individual has reapplied for benefits under section 1382 of this title and been determined to be eligible for benefits under such section.

§ 404.2001 Introduction

(a) Explanation of representative payment. This subpart explains the principles and procedures that we follow in determining whether to make representative payment and in selecting a representative payee. It also explains the responsibilities that a representative payee has concerning the use of the funds he or she receives on behalf of a beneficiary. A representative payee may be either a person or an organization selected by us to receive benefits on behalf of a beneficiary. A representative payee will be selected if we believe that the interest of a beneficiary will be served by representative payment rather than direct payment of benefits. Generally, we appoint a representative payee if we have determined that the beneficiary is not able to manage or direct the management of benefit payments in his or her interest.

(b) Policy used to determine whether to make representative payment.

(1) Our policy is that every beneficiary has the right to manage his or her own benefits. However, some beneficiaries due to a mental or physical condition or due to their youth may be unable to do so. Under these circumstances, we may determine that the interests of the beneficiary would be better served if we certified benefit payments to another person as a representative payee.

(2) If we determine that representative payment is in the interest of a beneficiary, we will appoint a representative payee. We may appoint a representative payee even if the beneficiary is a legally competent individual. If the beneficiary is a legally incompetent individual, we may

appoint the legal guardian or some other person as a representative payee.

(3) If payment is being made directly to a beneficiary and a question arises concerning his or her ability to manage or direct the management of benefit payments, we will, if the beneficiary is 18 years old or older and has not been adjudged legally incompetent, continue to pay the beneficiary until we make a determination about his or her ability to manage or direct the management of benefit payments and the selection of a representative payee.

§ 404.2010 When payment will be made to representative payee.

(a) We pay benefits to a representative payee on behalf of a beneficiary 18 years old or older when it appears to us that this method of payment will be in the interest of the beneficiary. We do this if we have information that the beneficiary is—

(1) Legally incompetent or mentally incapable of managing benefit payments; or

(2) Physically incapable of managing or directing the management of his or her benefit payments.

(b) Generally, if a beneficiary is under age 18, we will pay benefits to a representative payee. However, in certain situations, we will make direct payments to a beneficiary under age 18 who shows the ability to manage the benefits. For example, we make direct payments to a beneficiary under age 18 if the beneficiary is—

(1) Receiving disability insurance benefits on his or her own Social Security earnings record; or

(2) Serving in the military services; or

(3) Living alone and supporting himself or herself; or

(4) A parent and files for himself or herself and/or his or her child and he or she has experience in handling his or her own finances; or

(5) Capable of using the benefits to provide for his or her current needs and no qualified payee is available; or

(6) Within 7 months of attaining age 18 and is initially filing an application for benefits.

§ 404.2021 Order of preference in selecting a representative payee.

(first paragraph and (b))

As a guide in selecting a representative payee, categories of preferred payees have been established. These preferences are flexible. Our primary concern is to select the payee who will best serve the beneficiary's interest. The preferences are:

. . . .

(b) For beneficiaries under age 18, our preference is—

(1) A natural or adoptive parent who has custody of the beneficiary, or a guardian;

(2) A natural or adoptive parent who does not have custody of the beneficiary, but is contributing toward the beneficiary's support and is demonstrating strong concern for the beneficiary's well being;

(3) A natural or adoptive parent who does not have custody of the beneficiary and is not contributing toward his or her support but is demonstrating strong concern for the beneficiary's well being;

(4) A relative or stepparent who has custody of the beneficiary;

(5) A relative who does not have custody of the beneficiary but is contributing toward the beneficiary's

support and is demonstrating concern for the beneficiary's well being;

(6) A relative or close friend who does not have custody of the beneficiary but is demonstrating concern for the beneficiary's well being; and

(7) An authorized social agency or custodial institution.

§ 404.2025 Information to be submitted by a representative payee.

(a) Before we select a representative payee, the payee applicant must give us information showing his or her relationship to the beneficiary and his or her responsibility for the care of the beneficiary.

(b) Anytime after we have selected a payee, we may ask the payee to give us information showing a continuing relationship to the beneficiary and a continuing responsibility for the care of the beneficiary. If the payee does not give us the requested information within a reasonable period of time, we may stop paying the payee unless we determine that the payee had a good reason for not complying with our request, and we receive the information requested.

§ 404.2030 Advance notice of the determination to make representative payment.

(a) Generally, whenever we intend to make representative payment and to name a payee, we notify the beneficiary or the individual acting on his or her behalf, of our proposed actions. In this notice we tell the person that we plan to name a representative payee and who that payee will be. We also ask the person to contact us if he or she objects to either proposed action. If he or she objects to either proposed action, the person may—

(1) Review the evidence upon which the proposed actions will be based; and

(2) Submit any additional evidence regarding the proposed actions.

(b) If the person objects to the proposed actions, we will review our proposed determinations and consider any additional information given to us. We will then issue our determinations. If the person is dissatisfied with either determination, he or she may request a reconsideration.

(c) If the person does not object to the proposed actions, we will issue our determinations. If the person is dissatisfied with either determination, he or she may request a reconsideration.

§ 404.2035 Responsibilities of a representative payee.

A representative payee has a responsibility to—

(a) Use the payments he or she receives only for the use and benefit of the beneficiary in a manner and for the purposes he or she determines, under the guidelines in this subpart, to be in the best interests of the beneficiary;

(b) Notify us of any event that will affect the amount of benefits the beneficiary receives or the right of the beneficiary to receive benefits;

(c) Submit to us, upon our request, a written report accounting for the benefits received; and

(d) Notify us of any change in his or her circumstances that would affect performance of the payee responsibilities.

§ 404.2040 Use of benefit payments.

(a) Current maintenance.

(1) We will consider that payments we certify to a representative payee have been used for the use and benefit of the beneficiary if they are used for the beneficiary's current maintenance. Current maintenance includes cost incurred in obtaining food, shelter, clothing, medical care, and personal comfort items.

Example: An aged beneficiary is entitled to a monthly Social Security benefit of $400. Her son, who is her payee, disburses her benefits in the following manner:

Rent and utilities	$200
Medical	25
Food	60
Clothing (coat)	55
Savings	30
Miscellaneous	30

The above expenditures would represent proper disbursements on behalf of the beneficiary.

(2) Notwithstanding the provisions of paragraph (a)(1) of this section, if a beneficiary is a member of an Aid to Families With Dependent Children (AFDC) assistance unit, we do not consider it inappropriate for a representative payee to make the benefit payments available to the AFDC assistance unit.

(b) Institutional care. If a beneficiary is receiving care in a Federal, State, or private institution because of mental or

physical incapacity, current maintenance includes the customary charges made by the institution, as well as expenditures for those items which will aid in the beneficiary's recovery or release from the institution or expenses for personal needs which will improve the beneficiary's conditions while in the institution.

Example: An institutionalized beneficiary is entitled to a monthly Social Security benefit of $320. The institution charges $700 a month for room and board. The beneficiary's brother, who is the payee, learns the beneficiary needs new shoes and does not have any funds to purchase miscellaneous items at the institution's canteen.

The payee takes his brother to town and buys him a pair of shoes for $29. He also takes the beneficiary to see a movie which costs $3. When they return to the institution, the payee gives his brother $3 to be used at the canteen.

Although the payee normally withholds only $25 a month from Social Security benefit for the beneficiary's personal needs, this month the payee deducted the above expenditures and paid the institution $10 less than he usually pays.

The above expenditures represent what we would consider to be proper expenditures for current maintenance.

(c) Support of legal dependents. If the current maintenance needs of the beneficiary are met, the payee may use part of the payments for the support of the beneficiary's legally dependent spouse, child, and/or parent.

Example: A disabled beneficiary receives a Veterans Administration (VA) benefit of $325 and a Social Security

benefit of $525. The beneficiary resides in a VA hospital and his VA benefits are sufficient to provide for all of his needs; i.e., cost of care and personal needs. The beneficiary's legal dependents—his wife and two children—have a total income of $250 per month in Social Security benefits. However, they have expenses of approximately $450 per month.

Because the VA benefits are sufficient to meet the beneficiary's needs, it would be appropriate to use part of his Social Security benefits to support his dependents.

(d) Claims of creditors. A payee may not be required to use benefit payments to satisfy a debt of the beneficiary, if the debt arose prior to the first month for which payments are certified to a payee. If the debt arose prior to this time, a payee may satisfy it only if the current and reasonably foreseeable needs of the beneficiary are met.

Example: A retroactive Social Security check in the amount of $1,640, representing benefits due for July 1980 through January 1981, was issued on behalf of the beneficiary to the beneficiary's aunt who is the representative payee. The check was certified in February 1981.

The nursing home, where the beneficiary resides, submitted a bill for $1,139 to the payee for maintenance expenses the beneficiary incurred during the period from June 1980 through November 1980. (Maintenance charges for December 1980 through February 1981 had previously been paid.)

Because the benefits were not required for the beneficiary's current maintenance, the payee had previously saved over $500 for the beneficiary and the beneficiary had no

foreseeable needs which would require large disbursements, the expenditure for the maintenance charges would be consistent with our guidelines.

§ 404.2040a Compensation for qualified organizations serving as representative payees.

(a) General. A community-based, nonprofit social service agency which meets the requirements set out in paragraph (b) of this section may request our authorization to collect a monthly fee from a beneficiary for providing representative payee services.

(b) Organizations that may request compensation. We will authorize an organization to collect a fee if all the following requirements are met.

(1) It is community-based, i.e., serves or represents one or more neighborhoods, city or county locales and is located within its service area.

(2) It is a nonprofit social service organization founded for religious, charitable or social welfare purposes and is tax exempt under section 501(c) of the Internal Revenue Code.

(3) It is bonded or licensed in the State in which it serves as representative payee.

(4) It regularly provides representative payee services concurrently to at least five beneficiaries. An organization which has received our authorization to collect a fee for representative payee services, but is temporarily not a payee for at least five beneficiaries, may request our approval to continue to collect fees.

(5) It was in existence on October 1, 1988.

(6) It is not a creditor of the beneficiary. See paragraph (c) of this section for exceptions to this requirement.

(c) Creditor relationship. If an organization has a creditor relationship with a beneficiary, we may, on a case-by-case basis, authorize the organization to collect a fee for payee services notwithstanding this relationship. To provide this authorization, we will review all of the evidence submitted by the organization and authorize collection of a fee when:

(1) The services provided by the organization help to meet the current needs of the beneficiary; and

(2) The amount the organization charges the beneficiary for these services is commensurate with the beneficiary's ability to pay.

(d) Authorization process.

(1) An organization must request in writing and receive an authorization from us before it may collect a fee.

(2) An organization seeking authorization to collect a fee must also give us evidence to show that it is qualified, pursuant to paragraphs (b) and (c) of this section, to collect a fee.

(3) If the evidence provided to us by the organization shows that the requirements of this section are met, we will notify the organization in writing that it is authorized to collect a fee. If we need more evidence, or if we are not able to authorize the collection of a fee, we will also notify the organization in writing that we have not authorized the collection of a fee.

(e) Revocation, cancellation and expiration of the authorization.

(1) We will revoke an authorization to collect a fee if we have evidence which establishes that an organization no longer meets the requirements of this section. We will issue a written notice to the organization explaining the reason(s) for the revocation.

(2) An organization may cancel its authorization at any time upon written
notice to us.

(f) Notices. The written notice we will send to an organization authorizing the collection of a fee will contain an effective date for the collection of a fee pursuant to paragraphs (b) and (c) of this section. The effective date will be no earlier than the month in which the organization asked for authorization to collect a fee. The notice will be applicable to all beneficiaries for whom the organization was payee at the time of our authorization and all beneficiaries for whom the organization becomes payee while the authorization is in effect.

(g) Limitation on fees.

(1) An organization authorized to collect a fee pursuant to this section may collect from a beneficiary a monthly fee for expenses (including overhead) it has incurred in providing payee services to a beneficiary if the fee does not exceed the lesser of—

(i) 10 percent of the beneficiary's monthly benefit payments; or

(ii) $25.00 per month.

(2) Any agreement providing for a fee in excess of the amount permitted under paragraph (g)(1) of this section shall be void and treated as misuse of benefits by the organization of the individual's benefits under S 404.2041.

(3) A fee may be collected for any month during which the organization—

(i) Provides representative payee services;

(ii) Receives a benefit payment for the beneficiary; and

(iii) Is authorized to receive a fee for representative payee services.

(4) Fees for services may not be taken from any funds conserved for the beneficiary by a payee in accordance with S 404.2045.

(5) Generally, an organization may not collect a fee for months in which it does not receive a benefit payment. However, an organization will be allowed to collect a fee for months in which it did not receive a payment if we later issue payments for these months and the organization:

(i) Received our approval to collect a fee for the months for which payment is made;

(ii) Provided payee services in the months for which payment is made; and

(iii) Was the payee when the retroactive payment was paid by us.

(6) An authorized organization may not collect a fee for the expenses it incurred in providing representative payee services if these expenses are paid from another source.

§ 404.2041 Liability for misuse of benefit payments.

Our obligation to the beneficiary is completely discharged when we make a correct payment to a representative payee on behalf of the beneficiary. The payee in his or her personal capacity, and not SSA, may be liable if the payee misuses the beneficiary's benefits.

§ 404.2045 Conservation and investment of benefit payments.

(a) General. After the representative payee has used benefit payments consistent with the guidelines in this subpart (see S 404.2040 regarding use of benefits), any remaining amount shall be conserved or invested on behalf of the beneficiary. Conserved funds should be invested in accordance with the rules followed by trustees. Any investment must show clearly that the payee holds the property in trust for the beneficiary.

Example: A State institution for mentally retarded children, which is receiving Medicaid funds, is representative payee for several Social Security beneficiaries. The checks the payee receives are deposited into one account which shows that the benefits are held in trust for the beneficiaries. The institution has supporting records which show the share each individual has in the account. Funds from this account are disbursed fairly quickly after receipt for the current support and maintenance of the beneficiaries as well as for miscellaneous needs the beneficiaries may have. Several of the beneficiaries have significant accumulated resources in this account. For those beneficiaries whose benefits have accumulated over $150, the funds should be deposited in an

interest-bearing account or invested relatively free of risk on behalf of the beneficiaries.

(b) Preferred investments. Preferred investments for excess funds are U.S. Savings Bonds and deposits in an interest or dividend paying account in a bank, trust company, credit union, or savings and loan association which is insured under either Federal or State law. The account must be in a form which shows clearly that the representative payee has only a fiduciary and not a personal interest in the funds. If the payee is the legally appointed guardian or fiduciary of the beneficiary, the account may be established to indicate this relationship. If the payee is not the legally appointed guardian or fiduciary, the accounts may be established as follows:

(1) For U.S. Savings Bonds—

_____ (Name of beneficiary) _____ (Social Security Number), for whom _____ (Name of payee) is representative payee for Social Security benefits;

(2) For interest or dividend paying accounts—

_____ (Name of beneficiary) by _____ (Name of payee), representative payee.

(c) Interest and dividend payments. The interest and dividends which result from an investment are the property of the beneficiary and may not be considered to be the property of the payee.

§ 404.2050 When a new representative payee will be selected.

When we learn that the interests of the beneficiary are not served by continuing payment to the present payee or that the present payee is no longer able to carry out the payee responsibilities, we try to find a new payee. We will select a new payee if we find a preferred payee or if the present payee—

(a) Has not used the benefit payments on the beneficiary's behalf in accordance with the guidelines in this subpart;

(b) Has not carried out the other responsibilities described in this subpart;

(c) Dies;

(d) No longer wishes to be payee;

(e) Is unable to manage the benefit payments; or

(f) Fails to cooperate, within a reasonable time, in providing evidence, accounting, or other information which we request.

§ 404.2055 When representative payment will be stopped.

If a beneficiary receiving representative payment shows us that he or she is mentally and physically able to manage or direct the management of benefit payments, we will make direct payment. Information which the beneficiary may give us to support his or her request for direct payment include the following—

(a) A physician's statement regarding the beneficiary's condition, or a statement by a medical officer of the institution where the beneficiary is or was confined, showing that the beneficiary is able to manage or direct the management of his or her funds; or

(b) A certified copy of a court order restoring the beneficiary's rights in a case where a beneficiary was adjudged legally incompetent; or

(c) Other evidence which establishes the beneficiary's ability to manage or direct the management of benefits.

§ 404.2060 Transfer of accumulated benefit payments.

A representative payee who has conserved or invested benefit payments shall transfer these funds, and the interest earned from the invested funds, to either a successor payee or to us, as we will specify. If the funds and the earned interest are returned to us, we will recertify them to a successor representative payee or to the beneficiary.

§ 404.2065 Accounting for benefit payments.

A representative payee is accountable for the use of benefits. We may require periodic written reports from representative payees. We may also, in certain situations, verify how a representative payee used the funds. A representative payee should keep records of what was done with the benefit payments in order to make accounting reports. We may ask the following questions—

(a) The amount of benefit payments on hand at the beginning of the accounting period;

(b) How the benefit payments were used;

(c) How much of the benefit payments were saved and how the savings were invested;

(d) Where the beneficiary lived during the accounting period; and

(e) The amount of the beneficiary's income from other sources during the accounting period. We ask for information about other funds to enable us to evaluate the use of benefit payments.

§ 416.110 Purpose of program.

The basic purpose underlying the supplemental security income program is to assure a minimum level of income for people who are age 65 or over, or who are blind or disabled and who do not have sufficient income and resources to maintain a standard of living at the established Federal minimum income level. The supplemental security income program replaces the financial assistance programs for the aged, blind, and disabled in the 50 States and the District of Columbia for which grants were made under the Social Security Act. Payments are financed from the general funds of the United States Treasury. Several basic principles underlie the program:

(a) Objective tests. The law provides that payments are to be made to aged, blind, and disabled people who have income and resources below specified amounts. This provides objective measurable standards for determining each person's benefits.

(b) Legal right to payments. A person's rights to supplemental security income payments--how much he gets and under what conditions--are clearly defined in the law. The area of administrative discretion is thus limited. If an applicant disagrees with the decision on his claim, he can obtain an administrative review of the decision and if still not satisfied, he may initiate court action.

(c) Protection of personal dignity. Under the Federal program, payments are made under conditions that are as protective of people's dignity as possible. No restrictions, implied or otherwise, are placed on how recipients spend the Federal payments.

(d) Nationwide uniformity of standards. The eligibility requirements and the Federal minimum income level are identical throughout the 50 States and the District of Columbia. This provides assurance of a minimum income base on which States may build supplementary payments.

(e) Incentives to work and opportunities for rehabilitation. Payment amounts are not reduced dollar-for-dollar for work income but some of an applicant's income is counted toward the eligibility limit. Thus, recipients are encouraged to work if they can. Blind and disabled recipients with vocational rehabilitation potential are referred to the appropriate State vocational rehabilitation agencies that offer rehabilitation services to enable them to enter the labor market.

(f) State supplementation and Medicaid determinations.

(1) Federal supplemental security income payments lessen the variations in levels of assistance and provide a basic level of assistance throughout the nation. States are required to provide mandatory minimum State supplementary payments beginning January 1, 1974, to aged, blind, or disabled recipients of assistance for the month of December 1973 under such State's plan approved under titles I, X, XIV, or XVI of the Act in order for the State to be eligible to receive title XIX funds (see Subpart T of this part). These payments must be in an amount sufficient to ensure that individuals who are converted to the new program will not have their income reduced below what it was under the State program for December 1973. In addition, each State may choose to provide more than the Federal supplemental security income and/or mandatory minimum State supplementary payment to whatever extent it finds

appropriate in view of the needs and resources of its citizens or it may choose to provide no more than the mandatory minimum payment where applicable. States which provide State supplementary payments can enter into agreements for Federal administration of the mandatory and optional State supplementary payments with the Federal Government paying the administrative costs. A State which elects Federal administration of its supplementation program must apply the same eligibility criteria (other than those pertaining to income) applied to determine eligibility for the Federal portion of the supplemental security income payment, except as provided in sec. 1616(c) of the Act (see Subpart T of this part). There is a limitation on the amount payable to the Secretary by a State for the amount of the supplementary payments made on its behalf for any fiscal year pursuant to the State's agreement with the Commissioner. Such limitation on the amount of reimbursement is related to the State's payment levels for January 1972 and its total expenditures for calendar year 1972 for aid and assistance under the appropriate State plan(s)(see Subpart T of this part).

(2) States with Medicaid eligibility requirements for the aged, blind, and disabled that are identical (except as permitted by S 416.2111) to the supplemental security income eligibility requirements may elect to have the Social Security Administration determine Medicaid eligibility under the State's program for recipients of supplemental security income and recipients of a federally administered State supplementary payment. The State would pay half of Social Security Administration's incremental administrative costs arising from carrying out the agreement.

§ 416.202 Who may get SSI benefits.

You are eligible for SSI benefits if you meet all of the following requirements:

(a) You are—

(1) Aged 65 or older (Subpart H);

(2) Blind (Subpart I); or

(3) Disabled (Subpart I).

(b) You are a resident of the United States (S 416.1603), and--

(1) A citizen or a national of the United States (S 416.1610);

(2) An alien lawfully admitted for permanent residence in the United States (S 416.1615);

(3) An alien permanently residing in the United States under color of law (S 416.1618); or

(4) A child of armed forces personnel living overseas as described in S 416.216.

(c) You do not have more income than is permitted (Subparts K and D).

(d) You do not have more resources than are permitted (Subpart L).

(e) You are disabled, drug addiction or alcoholism is a contributing factor material to the determination of disability (see S 416.935), and you have not previously received a total of 36 months of Social Security benefit payments when appropriate treatment was available or 36 months of SSI benefits on the basis of disability where drug addiction or alcoholism was a contributing factor material to the determination of disability.

(f) You are not—

(1) Fleeing to avoid prosecution for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which you flee (or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of that State);

(2) Fleeing to avoid custody or confinement after conviction for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which you flee (or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of that State); or

(3) Violating a condition of probation or parole imposed under Federal or State law.

(g) You file an application for SSI benefits (Subpart C).

§ 416.610 When payment will be made to a representative payee.

(a) We pay benefits to a representative payee on behalf of a beneficiary 18 years old or older when it appears to us that this method of payment will be in the interest of the beneficiary. We do this if we have information that the beneficiary is—

(1) Legally incompetent or mentally incapable of managing benefit payments; or

(2) Physically incapable of managing or directing the management of his or her benefit payments; or

(3) Eligible for benefits solely on the basis of disability and drug addiction or alcoholism is a contributing factor material to the determination of disability.

(b) Generally, if a beneficiary is under age 18, we will pay benefits to a representative payee. However, in certain situations, we will make direct payments to a beneficiary under age 18 who shows the ability to manage the benefits. For example, we make direct payment to a beneficiary under age 18 if the beneficiary is—

(1) A parent and files for himself or herself and/or his or her child and he or she has experience in handling his or her own finances; or

(2) Capable of using the benefits to provide for his or her current needs and no qualified payee is available; or

(3) Within 7 months of attaining age 18 and is initially filing an application for benefits.

§ 416.621 Order of preference in selecting a representative payee.

As a guide in selecting a representative payee, categories of preferred payees have been established. These preferences are flexible. Our primary concern is to select the payee who will best serve the beneficiary's interests. The preferences are:

(a) For beneficiaries 18 years old or older our preference is--

(1) A legal guardian, spouse (or other relative) who has custody of the beneficiary or who demonstrates strong concern for the personal welfare of the beneficiary;

(2) A friend who has custody of the beneficiary or demonstrates strong concern
for the personal welfare of the beneficiary;

(3) A public or nonprofit agency or institution having custody of the beneficiary;

(4) A private institution operated for profit and licensed under State law, which has custody of the beneficiary; and

(5) Persons other than above who are qualified to carry out the responsibilities of a payee and who are able and willing to serve as a payee for the beneficiary; e.g., members of community groups or organizations who volunteer to serve as payee for a beneficiary.

(b) For beneficiaries under age 18, our preference is—

(1) A natural or adoptive parent who has custody of the beneficiary, or a guardian;

(2) A natural or adoptive parent who does not have custody of the beneficiary, but is contributing toward the beneficiary's support and is demonstrating strong concern for the beneficiary's well being;

(3) A natural or adoptive parent who does not have custody of the beneficiary and is not contribution toward his or her support but is demonstrating strong concern for the beneficiary's well being;

(4) A relative or stepparent who has custody of the beneficiary;

(5) A relative who does not have custody of the beneficiary but is contributing toward the beneficiary's support and is demonstrating concern for the beneficiary's well being;

(6) A relative or close friend who does not have custody of the beneficiary but is demonstrating concern for the beneficiary's well being; and

(7) An authorized social agency or custodial institution.

§ 416.o35 Responsibilities of a representative payee.

A representative payee has a responsibility to—

(a) Use the payments he or she receives only for the use and benefit of the beneficiary in a manner and for the purposes he or she determines, under the guidelines in this subpart, to be in the best interests of the beneficiary;

(b) Notify us of any event that will affect the amount of benefits the beneficiary receives or the right of the beneficiary to receive benefits (See Subpart G of this part concerning these reporting requirements);

(c) Submit to us, upon our request, a written report accounting for the benefits received;

(d) Notify us of any change in his or her circumstances that would affect performance of the payee responsibilities; and

(e) In cases in which the beneficiary is an individual under age 18 (including cases in which the beneficiary is an individual whose low birth weight is a contributing factor material to our determination that the individual is disabled), ensure that the beneficiary is and has been receiving treatment to the extent considered medically necessary and available for the condition that was the basis for providing benefits (See S 416.994a(i).)

§ 416.640 Use of benefit payments.

(a) Current maintenance. We will consider that payments we certify to a representative payee have been used for the use and benefit of the beneficiary if they are used for the beneficiary's current maintenance. Current maintenance includes costs incurred in obtaining food, shelter, clothing, medical care and personal comfort items.

Example: A Supplemental Security Income beneficiary is entitled to a monthly benefit of $264. The beneficiary's son, who is the representative payee, disburses the benefits in the following manner:

Rent and Utilities	$166
Medical	20
Food	60
Clothing	10
Miscellaneous	8

The above expenditures would represent proper disbursements on behalf of the beneficiary.

(b) Institution not receiving Medicaid funds on beneficiary's behalf. If a beneficiary is receiving care in a Federal, State, or private institution because of mental or physical incapacity, current maintenance will include the customary charges for the care and services provided by an institution, expenditures for those items which will aid in the beneficiary's recovery or release from the institution, and nominal expenses for personal needs (e.g., personal hygiene items, snacks, candy) which will improve the beneficiary's condition. Except as provided under S 416.212, there is no restriction in using SSI benefits for a beneficiary's current

maintenance in an institution. Any payments remaining from SSI benefits may be used for a temporary period to maintain the beneficiary's residence outside of the institution unless a physician has certified that the beneficiary is not likely to return home.

Example: A hospitalized disabled beneficiary is entitled to a monthly benefit of $264. The beneficiary, who resides in a boarding home, has resided there for over 6 years. It is doubtful that the beneficiary will leave the boarding home in the near future. The boarding home charges $215 per month for the beneficiary's room and board.

The beneficiary's representative payee pays the boarding home $215 (assuming an unsuccessful effort was made to negotiate a lower rate during the beneficiary's absence) and uses the balance to purchase miscellaneous personal items for the beneficiary. There are no benefits remaining which can be conserved on behalf of the beneficiary. The payee's use of the benefits is consistent with our guidelines.

(c) Institution receiving Medicaid funds on beneficiary's behalf. Except in the case of a beneficiary receiving benefits payable under S 416.212, if a beneficiary resides throughout a month in an institution that receives more than 50 percent of the cost of care on behalf of the beneficiary from Medicaid, any payments due shall be used only for the personal needs of the beneficiary and not for other items of current maintenance.

Example: A disabled beneficiary resides in a hospital. The superintendent of the hospital receives $30 per month as the beneficiary's payee. The benefit payment is disbursed in the

following manner, which would be consistent with our guidelines:

Miscellaneous canteen items $10
Clothing 15
Conserved for future needs of the beneficiary 5

(d) Claims of creditors. A payee may not be required to use benefit payments to satisfy a debt of the beneficiary, if the debt arose prior to the first month for which payments are certified to a payee. If the debt arose prior to this time, a payee may satisfy it only if the current and reasonably foreseeable needs of the beneficiary are met.

Example: A disabled beneficiary was determined to be eligible for a monthly benefit payment of $208 effective April 1981. The benefits were certified to the beneficiary's brother who was appointed as the representative payee. The payee conserved $27 of the benefits received. In June 1981 the payee received a bill from a doctor who had treated the beneficiary in February and March 1981. The bill was for $175.

After reviewing the beneficiary's current needs and resources, the payee decided not to use any of the benefits to pay the doctor's bill. (Approximately $180 a month is required for the beneficiary's current monthly living expenses--rent, utilities, food, and insurance--and the beneficiary will need new shoes and a coat within the next few months.)

Based upon the above, the payee's decision not to pay the doctor's bill is consistent with our guidelines.

(e) Dedicated accounts for eligible individuals under age 18.

(1) When past-due benefit payments are required to be paid into a separate dedicated account (see S 416.546), the representative payee is required to establish in a financial institution an account dedicated to the purposes described in paragraph (e)(2) of this section. This dedicated account may be a checking, savings or money market account subject to the titling requirements set forth in S 416.645. Dedicated accounts may not be in the form of certificates of deposit, mutual funds, stocks, bonds or trusts.

(2) A representative payee shall use dedicated account funds, whether deposited on a mandatory or permissive basis (as described in S 416.546), for the benefit of the child and only for the following allowable expenses—

(i) Medical treatment and education or job skills training;

(ii) If related to the child's impairment(s), personal needs assistance; special equipment; housing modification; and therapy or rehabilitation; or

(iii)Other items and services related to the child's impairment(s) that we determine to be appropriate. The representative payee must explain why or how the other item or service relates to the impairment(s) of the child.

(3) Representative payees must keep records and receipts of all deposits to and expenditures from dedicated accounts, and must submit these records to us upon our request, as explained in SS 416.635 and 416.665.

(4) The use of funds from a dedicated account in any manner not authorized by this section constitutes a misapplication of benefits. These misapplied benefits are not an overpayment as defined in S 416.537; however, if we determine that a representative payee knowingly misapplied funds in a dedicated account, that representative payee shall be liable to us in an amount equal to the total amount of the misapplied funds.

(5) The restrictions described in this section and the income and resource exclusions described in SS 416.1124(c)(20) and 416.1247 shall continue to apply until all funds in the dedicated account are depleted or eligibility for benefits terminates, whichever comes first. This continuation of the restrictions and exclusions applies in situations where funds remain in the account in any of the following situations—

(i) A child attains age 18, continues to be eligible and receives payments directly;

(ii) A new representative payee is appointed. When funds remaining in a dedicated account are returned to us by the former representative payee, the new representative payee must establish an account in a financial institution into which we will deposit these funds, even if the amount is less than that prescribed in S 416.546; or

(iii)During a period of suspension due to ineligibility as described in S 416.1321, administrative suspension, or a period of eligibility for which no payment is due.

§ 416.645 Conservation and investment of benefit payments.

(a) General. If payments are not needed for the beneficiary's current maintenance or reasonably foreseeable needs, they shall be conserved or invested on behalf of the beneficiary. Conserved funds should be invested in accordance with the rules followed by trustees. Any investment must show clearly that the payee holds the property in trust for the beneficiary.

Example: A State institution for mentally retarded children, which is receiving Medicaid funds, is representative payee for several beneficiaries. The checks the payee receives are deposited into one account which shows that the benefits are held in trust for the beneficiaries. The institution has supporting records which show the share each individual has in the account. Funds from this account are disbursed fairly quickly after receipt for the personal needs of the beneficiaries. However, not all those funds were disbursed for this purpose. As a result, several of the beneficiaries have significant accumulated resources in this account. For those beneficiaries whose benefits have accumulated over $150, the funds should be deposited in an interest-bearing account or invested relatively free of risk on behalf of the beneficiaries.

(b) Preferred investments. Preferred investments for excess funds are U.S. Savings Bonds and deposits in an interest or dividend paying account in a bank, trust company, credit union, or savings and loan association which is insured under either Federal or State law. The account must be in a form which shows clearly that the representative payee has only a fiduciary and not a personal interest in the funds. If the

payee is the legally appointed guardian or fiduciary of the beneficiary, the account may be established to indicate this relationship. If the payee is not the legally appointed guardian or fiduciary, the accounts may be established as follows:

(1) For U.S. Savings Bonds--------- (Name of beneficiary) --- (Social Security Number), for whom ------- (Name of payee) is representative payee for Supplemental Security Income benefits;

(2) For interest or dividend paying accounts--..... (Name of beneficiary) by ..... (Name of payee), representative payee.

(c) Interest and dividend payments. The interest and dividends which result from an investment are the property of the beneficiary and may not be considered to be the property of the payee.

§ 416.1205 Limitation on resources.

(a) Individual with no eligible spouse. An aged, blind, or disabled individual with no spouse is eligible for benefits under title XVI of the Act if his or her nonexcludable resources do not exceed $1,500 prior to January 1, 1985, and all other eligibility requirements are met. An individual who is living with an ineligible spouse is eligible for benefits under title XVI of the Act if his or her nonexcludable resources, including the resources of the spouse, do not exceed $2,250 prior to January 1, 1985, and all other eligibility requirements are met.

(b) Individual with an eligible spouse. An aged, blind, or disabled individual who has an eligible spouse is eligible for benefits under title XVI of the Act if their nonexcludable resources do not exceed $2,250 prior to January 1, 1985, and all other eligibility requirements are met.

(c) Effective January 1, 1985 and later. The resources limits and effective dates for January 1, 1985 and later are as follows:

Effective date	Individual	Individual and spouse
Jan. 1, 1985	$1,600	$2,400
Jan. 1, 1986	1,700	$2,550
Jan. 1, 1987	1,800	$2,700
Jan. 1, 1988	1,900	$2,850
Jan. 1, 1989	2,000	$3,000

Wash. Rev. Code § 13.34.030. Definitions.

For purposes of this chapter:

(1) "Abandoned" means when the child's parent, guardian, or other custodian has expressed, either by statement or conduct, an intent to forego, for an extended period, parental rights or responsibilities despite an ability to exercise such rights and responsibilities. If the court finds that the petitioner has exercised due diligence in attempting to locate the parent, no contact between the child and the child's parent, guardian, or other custodian for a period of three months creates a rebuttable presumption of abandonment, even if there is no expressed intent to abandon.

(2) "Child" and "juvenile" means any individual under the age of eighteen years.

(3) "Current placement episode" means the period of time that begins with the most recent date that the child was removed from the home of the parent, guardian, or legal custodian for purposes of placement in out-of-home care and continues until: (a) The child returns home; (b) an adoption decree, a permanent custody order, or guardianship order is entered; or (c) the dependency is dismissed, whichever occurs first.

(4) "Dependency guardian" means the person, nonprofit corporation, or Indian tribe appointed by the court pursuant to this chapter for the limited purpose of assisting the court in the supervision of the dependency.

(5) "Dependent child" means any child who:

(a) Has been abandoned;

(b) Is abused or neglected as defined in chapter 26.44 RCW by a person legally responsible for the care of the child; or

(c) Has no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development.

(6) "Developmental disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the secretary to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial handicap to the individual.

(7) "Guardian" means the person or agency that: (a) Has been appointed as the guardian of a child in a legal proceeding other than a proceeding under this chapter; and (b) has the legal right to custody of the child pursuant to such appointment. The term "guardian" shall not include a "dependency guardian" appointed pursuant to a proceeding under this chapter.

(8) "Guardian ad litem" means a person, appointed by the court to represent the best interests of a child in a proceeding under this chapter, or in any matter which may be consolidated with a proceeding under this chapter. A "court-appointed special advocate" appointed by the court to be the guardian ad litem for the child, or to perform substantially the same duties and functions as a guardian ad litem, shall be deemed to be guardian ad litem for all purposes and uses of this chapter.

(9) "Guardian ad litem program" means a court-authorized volunteer program, which is or may be established by the superior court of the county in which such proceeding is filed, to manage all aspects of volunteer guardian ad litem representation for children alleged or found to be dependent. Such management shall include but is not limited to: Recruitment, screening, training, supervision, assignment, and discharge of volunteers.

(10)"Indigent" means a person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, general assistance, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility; or

(c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the federally established poverty level; or

(d) Unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.

(11)"Out-of-home care" means placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or placement in a home, other than that of the child's parent, guardian, or legal custodian, not required to be licensed pursuant to chapter 74.15 RCW.

(12)"Preventive services" means preservation services, as defined in chapter 74.14C RCW, and other reasonably available services, including housing services, capable of preventing the need for out-of-home placement while protecting the child. Housing services may include, but are not limited to, referrals to federal, state, local, or private agencies or organizations, assistance with forms and applications, or financial subsidies for housing.

(13)"Shelter care" means temporary physical care in a facility licensed pursuant to RCW 74.15.030 or in a home not required to be licensed pursuant to RCW 74.15.030.

(14)"Social study" means a written evaluation of matters relevant to the disposition of the case and shall contain the following information:

(a) A statement of the specific harm or harms to the child that intervention is designed to alleviate;

(b) A description of the specific services and activities, for both the parents and child, that are needed in order to prevent serious harm to the child; the reasons why such services and activities are likely to be useful; the availability of any proposed services; and the agency's overall plan for ensuring that the services will be delivered. The description shall identify the services chosen and approved by the parent;

(c) If removal is recommended, a full description of the reasons why the child cannot be protected adequately in the home, including a description of any previous efforts to work with the parents and the child in the home; the in- home treatment programs that have been considered and rejected; the preventive services that have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home; and the parents' attitude toward placement of the child;

(d) A statement of the likely harms the child will suffer as a result of removal;

(e) A description of the steps that will be taken to minimize the harm to the child that may result if separation occurs; and

(f) Behavior that will be expected before determination that supervision of the family or placement is no longer necessary.

Wash. Rev. Code § 13.34.130. Order of disposition for a dependent child, alternatives--Petition seeking termination of parent-child relationship--Placement with relatives

If, after a fact-finding hearing pursuant to RCW 13.34.110, it has been proven by a preponderance of the evidence that the child is dependent within the meaning of RCW 13.34.030 after consideration of the social study prepared pursuant to RCW 13.34.110 and after a disposition hearing has been held pursuant to RCW 13.34.110, the court shall enter an order of disposition pursuant to this section.

(1) The court shall order one of the following dispositions of the case:

(a) Order a disposition other than removal of the child from his or her home, which shall provide a program designed to alleviate the immediate danger to the child, to mitigate or cure any damage the child has already suffered, and to aid the parents so that the child will not be endangered in the future. In determining the disposition, the court should choose those services, including housing assistance, that least interfere with family autonomy and are adequate to protect the child.

(b) Order the child to be removed from his or her home and into the custody, control, and care of a relative or the department or a licensed child placing agency for placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or in a home not required to be licensed pursuant to chapter 74.15 RCW. Unless there is reasonable cause to believe that the health, safety, or welfare of the child would be jeopardized or

that efforts to reunite the parent and child will be hindered, such child shall be placed with a person who is: (i) Related to the child as defined in RCW 74.15.020(2)(a) with whom the child has a relationship and is comfortable; and (ii) willing and available to care for the child.

(2) Placement of the child with a relative under this subsection shall be given preference by the court. An order for out-of-home placement may be made only if the court finds that reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home, specifying the services that have been provided to the child and the child's parent, guardian, or legal custodian, and that preventive services have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home, and that:

(a) There is no parent or guardian available to care for such child;

(b) The parent, guardian, or legal custodian is not willing to take custody of the child; or

(c) The court finds, by clear, cogent, and convincing evidence, a manifest danger exists that the child will suffer serious abuse or neglect if the child is not removed from the home and an order under RCW 26.44.063 would not protect the child from danger.

(3) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section, the court may order that a petition seeking termination of the parent and child relationship be filed if the requirements of RCW 13.34.132 are met.

(4) If there is insufficient information at the time of the disposition hearing upon which to base a determination regarding the suitability of a proposed placement with a relative, the child shall remain in foster care and the court shall direct the supervising agency to conduct necessary background investigations as provided in chapter 74.15 RCW and report the results of such investigation to the court within thirty days. However, if such relative appears otherwise suitable and competent to provide care and treatment, the criminal history background check need not be completed before placement, but as soon as possible after placement. Any placements with relatives, pursuant to this section, shall be contingent upon cooperation by the relative with the agency case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts and any other conditions imposed by the court. Noncompliance with the case plan or court order shall be grounds for removal of the child from the relative's home, subject to review by the court.

Wash. Rev. Code § 74.13.060. Secretary as custodian of funds of person placed with department--Authority--Limitations--Termination

The secretary or his designees or delegatees shall be the custodian without compensation of such moneys and other funds of any person which may come into the possession of the secretary during the period such person is placed with the department of social and health services pursuant to chapter 74.13 RCW. As such custodian, the secretary shall have authority to disburse moneys from the person's funds for the following purposes only and subject to the following limitations:

(1) The secretary may disburse any of the funds belonging to such person for such personal needs of such person as the secretary may deem proper and necessary.

(2) The secretary may apply such funds against the amount of public assistance otherwise payable to such person. This includes applying, as reimbursement, any benefits, payments, funds, or accrual paid to or on behalf of said person from any source against the amount of public assistance expended on behalf of said person during the period for which the benefits, payments, funds or accruals were paid.

(3) All funds held by the secretary as custodian may be deposited in a single fund, the receipts and expenditures therefrom to be accurately accounted for by him on an individual basis. Whenever, the funds belonging to any one person exceed the sum of five hundred dollars, the secretary may deposit said funds in a savings and loan association account on behalf of that particular person.

(4) When the conditions of placement no longer exist and public assistance is no longer being provided for such person, upon a showing of legal competency and proper authority, the secretary shall deliver to such person, or the parent, person, or agency legally responsible for such person, all funds belonging to the person remaining in his possession as custodian, together with a full and final accounting of all receipts and expenditures made therefrom.

(5) The appointment of a guardian for the estate of such person shall terminate the secretary's authority as custodian of said funds upon receipt by the secretary of a certified copy of letters of guardianship. Upon the guardian's request, the secretary shall immediately forward to such guardian any funds of such person remaining in the secretary's possession together with full and final accounting of all receipts and expenditures made therefrom.

Wash. Rev. Code § 74.20A.010. Purpose--Remedies additional

Common law and statutory procedures governing the remedies for enforcement of support for financially dependent minor children by responsible parents have not proven sufficiently effective or efficient to cope with the increasing incidence of financial dependency. The increasing workload of courts, prosecuting attorneys, and the attorney general has made such remedies uncertain, slow and inadequate, thereby resulting in a growing burden on the financial resources of the state, which is constrained to provide public assistance grants for basic maintenance requirements when parents fail to meet their primary obligations. The state of Washington, therefore, exercising its police and sovereign power, declares that the common law and statutory remedies pertaining to family desertion and nonsupport of minor dependent children shall be augmented by additional remedies directed to the real and personal property resources of the responsible parents. In order to render resources more immediately available to meet the needs of minor children, it is the legislative intent that the remedies herein provided are in addition to, and not in lieu of, existing law. It is declared to be the public policy of this state that this chapter be construed and administered to the end that children shall be maintained from the resources of responsible parents, thereby relieving, at least in part, the burden presently borne by the general citizenry through welfare programs.

Wash. Admin. Code § 388-25-0210. How does the department treat resources and unearned income of a child in foster care?

(1) Unearned income includes Supplemental Security Income (SSI), Retirement, Survivors and Disability Insurance (RSDI), veteran's benefits, railroad retirement benefits, inheritances, or any other payments for which the child is eligible, unless specifically exempted by the terms and conditions of the receipt of the income. The department must use income not exempted to cover the child's cost of care, except for resources held in trust for an American Indian child.

(2) Any person, agency or court that receives payments on behalf of a child in out-of-home care must send the payments to the department's division of child support.

Wash. Admin. Code § 388-70-069
(repealed and replaced by Wash. Admin. Code § 388-25-0210)

(1) If a child in foster care is entitled to financial benefits the income received shall be used on behalf of the child to help pay for the cost of the foster care received, except for resources held in trust for an American Indian child according to provisions in WAC 388-28-650.

(a) Income includes SSI [Supplemental Security Income], RSDI [retirement survivors disability insurance], veteran's benefits, railroad retirement benefits, inheritances, or any other payments for which the child is eligible, unless specifically exempted by the terms and conditions of the receipt of the income.

(b) Receipt of other income as described above shall not relieve the child's responsible parent(s) of the liability for payment of child support in accordance with WAC 388-70-075 through 388-70-084.

(2) Any person, agency, or court which receives any payments on behalf of a child in foster care shall remit such payments to the office of support enforcement, in accordance with WAC 388-70-082.

(3) Resources in the control of a child in foster care shall be treated in accordance with WAC 388-28-400 through 388-28-455.

Supreme Court, U.S.
FILED
APR 25 2002
OFFICE OF THE CLERK

No. 01-1420

IN THE

Supreme Court of the United States

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, *et al.*,

Petitioners,

v.

GUARDIANSHIP ESTATE OF DANNY KEFFELER, by WANDA PIERCE, Guardian, and other persons similarly situated,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF IN OPPOSITION

RICHARD B. PRICE
P.O. Box 1687
Omak, WA 98841
(509) 826-5110

RODNEY M. REINBOLD
P.O. Box 751
Okanogan, WA 98840
(509) 422-3610

TERESA WYNN ROSEBOROUGH
Counsel of Record
DAVID I. ADELMAN
DEBORAH M. DANZIG
JENNIFER N. IDE
SUTHERLAND ASBILL
& BRENNAN LLP
999 Peachtree Street, N.E.
Atlanta, GA 30309-3996
(404) 853-8000

Attorneys for Respondents

173704

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

Rather than confront the question decided by the Washington Supreme Court, the State of Washington suggests a question presented that requires no intervention of this Court to answer. After reciting that the Social Security Act authorizes the appointment of representative payees and that Social Security regulations authorize payees to use the benefits to pay for the beneficiary's current care, the State asks whether a representative payee that uses the benefits to pay for the beneficiary's current care violates the anti-alienation provisions of 42 U.S.C. § 407(a). As this case raises no challenge to the regulations authorizing representative payees to use benefits for the current maintenance of the beneficiary, the answer to that question for purposes of this action is "no," so long as the payment is in the beneficiary's best interest.

The questions presented to and decided by the Washington Supreme Court were far more complex. Respondents oppose the grant of certiorari in this case, but respectfully suggest that if the Court is inclined to review this matter, certiorari should be granted to review a question that was actually decided by the court below and not to answer the overly simplistic tautological question suggested by Petitioner. Respondents respectfully suggest that this case presents the following questions:

1. Washington State statutes and regulations mandate that the Washington Department of Social and Health Services ("DSHS") expend the federal funds it receives, including the Social Security benefits it receives as representative payee for children in foster care, to conserve to the maximum extent possible State public assistance funds and to "cover the child's cost of care", without regard to the best interests or special needs of the child. To effectuate these State law mandates, DSHS applies to become the representative payee of children in its care and enforces a "cost recovery policy" pursuant to which it:

(1) allocates all of the Social Security funds it anticipates receiving in the following year to offset the projected budget costs of its foster care program and (2) reimburses itself for a broad range of foster care costs by causing substantially all of the benefits received on behalf of a child to be transferred from a trust fund within the State Treasury to DSHS without regard to the special needs or best interests of the child. The Washington Supreme Court held that the State statutes and regulations governing DSHS created a debtor-creditor relationship between the child and the State.

Does the Washington Department of Social and Health Services's cost recovery policy violate § 407(a)'s prohibitions against the assignment of future Social Security payments and against use of legal process to seek reimbursement from Social Security benefits?

2. This Court held in *Philpott* v. *Essex County Welfare Board*, 409 U.S. 413 (1973) and *Bennett* v. *Arkansas*, 485 U.S. 395 (1988) that 42 U.S.C. § 407(a) imposes a "broad bar" on the use of any legal process to reach Social Security benefits to reimburse creditors, even if the creditor is a State providing the entirety of the beneficiary's "current care." Can the Washington Department of Social and Health Services escape the prohibitions of § 407(a) by causing itself to be designated as the beneficiaries' representative payee under § 405(j)?

3. Does the Washington Department of Social and Health Services violate both § 407(a) and its obligations under § 405(j) as the representative payee of children in foster care when it fails to use the Social Security benefits it receives in the children's best interests and instead uses the benefits to reimburse itself for (a) past due foster care costs; (b) administrative costs unrelated to current maintenance; (c) foster care benefits the child is not legally obligated to pay; and (d) its costs of caring for the child without first addressing the child's special needs?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF CONTENTS	iii
TABLE OF CITED AUTHORITIES	v
INTRODUCTION	1
STATEMENT	2
A. DSHS's Use Of Social Security Benefits To Reimburse Foster Care Expenditures	2
1. Washington State's Foster Care Program.	2
2. DSHS's Reimbursement Procedures.	3
B. The Administrative Proceedings	5
C. The Proceedings In The Washington Courts	6
1. The trial court's initial ruling and injunction.	6
2. The Washington Supreme Court's remand for further findings.	7
3. The Washington Supreme Court's ruling after remand.	8
D. The Stay	10

Contents

	Page
REASONS FOR DENYING THE WRIT	10
A. The Question Presented As Stated By Petitioner Was Not The Question Resolved By The Washington Supreme Court's Decision Below And The Petition Assumes And Relies On Facts That Were Not Presented To The Washington Supreme Court.	10
B. *Keffeler* Does Not Present A Split of Authority; The Washington Supreme Court's Decision Rests On Factual Conclusions That Distinguish Keffeler From Those With Which It Is Asserted To Conflict.	14
1. *Mason, King,* and *C.G.A.*	14
2. *Nelson* and *Mellies.*	18
C. *Keffeler* Is Fully Consistent With The Regulations Adopted By The Social Security Administration.	19
D. The *Keffeler* Decision Affects Only The State Of Washington And Does Not Present A National Question.	23
E. *Keffeler* Was Correctly Decided.	25
F. The Decision Of The Seventh Circuit In *Mason v. Sybinski* Presents A Better Vehicle For Determining The Rights And Obligations Of States As Representative Payees Than Does This Case.	28
CONCLUSION	29

TABLE OF CITED AUTHORITIES

	Page
CASES	
Bennett v. *Arkansas*, 485 U.S. 395 (1988)	ii, 25
C.G.A. v. *Alaska*, 824 P.2d 1364 (Alaska 1992)	14-16, 18
Conaway v. *Social Services Administration*, 471 A.2d 1058 (Md. App. 1984)	26
Conway v. *California Adult Authority*, 396 U.S. 107 (1969)	14
In re Guardianship of Nelson, 547 N.W.2d 105 (Minn. Ct. App. 1996)	18, 19
Keffeler v. *Department of Social and Health Services*, 145 Wash. 2d 1, 32 P.3d 267 (2001)	*passim*
King v. *Schafer*, 940 F.2d 1182 (CA8 1991), *cert. denied sub nom.*, *Crytes* v. *Schafer*, 502 U.S. 1095 (1992)	14-18
Mason v. *Sybinski*, 280 F.3d 788 (CA7 2002)	14-16, 18, 28, 29
Mellies v. *Mellies*, 815 P.2d 114 (Kan. 1991)	18, 19
Philpott v. *Essex County Welfare Board*, 409 U.S. 413 (1973)	ii, 25, 28

Cited Authorities

Page

STATUTES

42 U.S.C. § 402(d) 5

42 U.S.C. § 405(j) ..... ii, 1, 3, 5, 25, 26

42 U.S.C. § 405(j)(2)(C)(i)(III) 16

42 U.S.C. § 405(j)(2)(C)(iii)(III) 16

42 U.S.C. § 405(j)(2)(C)(iii)(IV) 16

42 U.S.C. § 405(j)(3)(B) 3

42 U.S.C. § 407(a) ..... *passim*

42 U.S.C. § 407(b) 25

42 U.S.C. § 672 ..... 2 , 22

RULE

U.S. Supreme Court Rule 10 14

OTHER AUTHORITIES

20 C.F.R. § 404.2010 ..... 17, 19

20 C.F.R. § 404.2020 3

20 C.F.R. § 404.2021 ..... 3, 19

20 C.F.R. § 404.2035 ..... 19, 20, 26

Cited Authorities

Page

20 C.F.R. § 404.2040 20

20 C.F.R. § 404.2040(a) 16

20 C.F.R. § 404.2040(b) 16

20 C.F.R. § 416.211(b) 18

20 C.F.R. § 416.414 18

20 C.F.R. § 416.620 3

42 C.F.R. § 435.120 17

42 C.F.R. § 435.121 17

42 C.F.R. §§ 435.700-.845 17

42 C.F.R. § 435.735(c)(1) 18

Wash. Rev. Code § 74.13 3

Wash. Rev. Code § 74.13.031 2

Wash. Rev. Code § 74.13.060 3

Wash. Rev. Code § 74.20.010 20

Wash. Admin. Code § 388-25-0210 ..... 3, 20

Wash. Admin. Code § 388-70-069, *repealed by* Wash. St. Reg. 01-08-047 (April 30, 2001) 3

INTRODUCTION

The Washington Department of Social and Health Services ("DSHS" or the "Department") has asked this Court to issue a writ of certiorari to the Washington Supreme Court to determine whether a representative payee violates the anti-alienation provisions of § 407(a) of the Social Security Act when it uses Social Security benefits to pay for current maintenance of the beneficiary. Although DSHS characterizes the Washington Supreme Court's decision as having answered this question in the affirmative, the court did not reach any such broad conclusion. The Washington Supreme Court did determine, however, after reviewing the specific practices and procedures of DSHS and the statutes and regulations governing the Department, that those statutes and regulations created a debtor-creditor relationship between certain children in foster care and the State.

The Washington Supreme Court held that the Department's "cost recovery policy," which required it to transfer the Social Security benefits of the children in its care to the State Treasury to pay the statutorily created debt without regard to the needs of the individual child, violated both § 407(a)'s anti-alienation provision and § 405(j)'s requirement that representative payees act in the best interests of the children in their care. *Keffeler* v. *State Dep't of Social & Health Servs.*, 145 Wash. 2d 1, 32 P.3d 267 (2001). The Washington Supreme Court's decision therefore rests on its interpretation of the effect of Washington State statutes and regulations, and not, as the State suggests, on any broad-brushed interpretation of the Social Security regulations. The rather specific interpretation of State law that drove the Washington Supreme Court's decision in this case is not worthy of this Court's review.

STATEMENT

A. DSHS's Use Of Social Security Benefits To Reimburse Foster Care Expenditures

1. Washington State's Foster Care Program. The Revised Code of Washington § 74.13.031 requires DSHS to provide foster care to children in Washington who are runaway, dependent, or neglected. On behalf of these children, the Children's Administration unit of the Department ("Children's") recruits foster parents. Current maintenance costs of children in foster care are paid in the first instance by their foster care parents, who are required by law to provide food, clothing, shelter, healthcare, and guardianship. A portion of the cost of providing food, clothing, and shelter to a foster child is reimbursed by the State of Washington through a stipend paid to the family in the following month. With the exception of a narrow class of exceptional children, the amount of the stipend depends only on the age of the child. The foster care family receives the same amount no matter how much it actually spent for the child's care. The federal government funds about one-third of the cost of the State's foster care program through TANF grants, Title IV-E, and similar programs.[1] (A-70 ¶ 85; A-109.)[2]

State statutes also direct the Department to act as the custodian of funds coming into its possession on behalf of

1. In 1996, Congress abolished the Aid to Families with Dependent Children ("AFDC") programs, replacing it with the Temporary Assistance to Needy Families ("TANF") program, a system of block grants to states meant to provide cash assistance to low-income families with children. Federal funding for foster care is also provided to the states pursuant to 42 U.S.C. § 672, commonly referred to as Title IV-E.

2. Citations in this brief to the Appendix to the Petition for a Writ of Certiorari appear as "A-" followed by the specific page(s) and paragraph(s), where applicable.

the children in its custody. Wash. Rev. Code § 74.13. DSHS may expend these funds to meet such personal needs as the Department deems "proper and necessary" or may apply such funds "as reimbursement, . . . against the amount of public assistance expended on behalf of said person during the period for which the benefits, payments, funds or accruals were paid." Wash. Rev. Code § 74.13.060.

Although Washington statutes authorize use of the funds to pay for the personal needs of the beneficiary, the Department's regulations define a narrower use of the funds: "If a child in foster care is entitled to financial benefits the income received *shall* be used on behalf of the child to help pay for the cost of the foster care received." Wash. Admin. Code § 388-70-069, *repealed by* Wash. St. Reg. 01-08-047 (Apr. 30, 2001). During the pendency of this action, this regulation was replaced by one that even more specifically limits the Department's use of the funds: "The department must use income not exempted to cover the child's cost of care. . . ." Wash. Admin. Code § 388-25-0210. Both regulations incorporate a definition of "income" that expressly includes both Social Security Supplemental Income ("SSI"), which is payable in the event the child is permanently disabled, and Social Security survivor benefits ("SSA"), which are payable in the event a parent eligible for Social Security dies prematurely or is permanently disabled.

2. DSHS's Reimbursement Procedures. Federal law provides a process by which a "representative payee" can be appointed to administer a child's benefit payments. 42 U.S.C. § 405(j). The Social Security Act favors appointment of parents and relatives and forbids appointment of creditors, unless they are institutions licensed by the state. 42 U.S.C. § 405(j)(3)(B). The payee is to be selected based upon who will best serve the interests of the child. 20 C.F.R § 404.2020; 20 C.F.R. § 416.620. States are not favored for selection as representative payees. 20 C.F.R. § 404.2021.

When an eligible child is placed in the custody of DSHS, DSHS makes an application for Social Security benefits on behalf of the child and names itself as the child's representative payee. DSHS deposits the Social Security benefits it receives as representative payee to a "Foster Care Trust Fund Account" at the Office of the State Treasurer. (A-52 ¶ 17.) Each month, the Trust Fund Unit accesses Children's computer generated list of "reimbursable foster expenses" to determine how much of the children's SSI and SSA funds it will direct the State Treasurer to pay to the Children's Administration Unit. (A-56 ¶ 28.) In general, if the amount in the trust fund account is adequate to reimburse the entire cost of foster care, as claimed by Children's, the entire claimed amount is paid. (A-56 ¶ 29.) Any remaining balances are carried over and are subject to intermittent account sweeps. (A-63 ¶ 58.) Account sweeping results in taking all of the Social Security funds which have accumulated to that date and applying them to all of the State's accumulated reimbursable foster care expenses. (A-63 ¶ 58.) Reimbursable expenses include not only the stipend paid to the child's foster family, but also a number of other costs, including case management services, travel and training of social workers, and general administrative costs. 145 Wash. 2d at 30, 32 P.3d at 281.

Social workers assigned to particular children are permitted to request "waiver of reimbursement" so that a foster child's Social Security benefits can be used for some special expenditure such as orthodonture (if medically necessary and not merely cosmetic), special clothing, or other needs. Whether these requests are granted rests in the discretion of the Trust Fund Unit. (A-57 ¶¶ 30-33.) A ten year review of the revenue and expenses charged to a random sample of 48 accounts showed that such special expenditures are seldom authorized. In the sampled accounts, only 3% of the Social Security benefits were used to purchase special items or provide special care. (A-60 ¶ 47.) Only 10 of the 48 children received any special needs disbursements. (A- 60 ¶ 47.)

The Department assigns in advance of its receipt 100% of the Social Security benefits it receives on behalf of children in foster care to be used to offset the costs of its foster care program. When the Department formulates its foster care budget, it estimates the amount it will receive in Social Security benefits as representative payee of children in foster care. It then offsets its budget request to the State legislature by the full amount of expected Social Security benefits. (A-55 ¶¶ 22, 23.) Any use of Social Security benefits to provide for a beneficiary's special needs necessarily causes the Department to exceed its budget.

B. The Administrative Proceedings

In 1990 Danny Keffeler entered the State of Washington's foster care system. Shortly thereafter, his mother died, making him eligible for SSA (survivor) benefits under the Social Security Act, 42 U.S.C. § 402(d). Danny's grandmother, Wanda B. Pierce, could not personally care for him, but was appointed guardian of Danny's estate. She applied for SSA benefits on his behalf and began receiving those benefits as Danny's representative payee, pursuant to 42 U.S.C. § 405(j). Ms. Pierce administered the benefits through the guardianship estate. She expended some funds for Danny's special needs and conserved the remainder to pay for college.

In April 1991, the Social Security Administration notified Ms. Pierce that she was being replaced as Danny's representative payee by the Department at the Department's request. Ms. Pierce timely appealed her removal and was reinstated in January 1993. Prior to Ms. Pierce's reinstatement, the Department received approximately $5,000 as Danny's representative payee.

In February 1994, the Department sought to remove Ms. Pierce as Danny's legal guardian because of her refusal to pay Danny's Social Security benefits over to the State as reimbursement for the cost of Danny's foster care. The Department simultaneously filed a creditor's claim

against Danny's estate to recover the SSA benefits received by Ms. Pierce as Danny's representative payee. The Department abandoned this claim once counsel for Danny's estate asserted that the claim was bared by § 407(a)'s anti-alienation provisions.

Determined to obtain Danny's Social Security benefits, the Department then appealed Ms. Pierce's reinstatement as representative payee to the Social Security Appeals Council. The Appeals Council remanded the matter back for reconsideration by an Administrative Law Judge, who again denied the Department's request. Although the Department filed an appeal of that decision, the Department abandoned the appeal once the present case was filed.

C. The Proceedings In The Washington Courts

Danny Keffeler filed a class action complaint in the Superior Court of Okanogan County on April 18, 1995, seeking to end the Department's practice of using Social Security benefits to offset the cost of foster care without regard to the special needs of the child. The Complaint also sought restitution of the funds used by the Department for that purpose. In March 1997, the trial court certified a class consisting of:

> All foster children within the State of Washington, past, present and future in foster care that receive [either SSA or SSI benefits] for whom the State of Washington acts or has sought to act as "representative payee."

145 Wash. 2d at 14, 32 P.3d at 273.

1. The trial court's initial ruling and injunction. In response to the parties' cross motions for summary judgment, the trial court granted Respondents' motion for summary judgment. The court held that the statutes and regulations pursuant to which the Department acts as representative payee for children in foster care and the

Department's use of those funds to reimburse itself for the cost of the State's foster care program violated the anti-alienation provision contained in 42 U.S.C. § 407(a).

The trial court enjoined the Department from seeking to have itself appointed representative payee in place of private representative payees or from requiring private representative payees to pay Social Security benefits over to the Department.[3] The court's order further requires the Department to hold in trust any funds it receives as representative payee for children in foster care; bars the Department from administering the funds to offset the State's cost of maintaining a child in foster care; and requires the Department to notify the guardians of children in foster care of their right to appeal the Department's appointment as representative payee. The injunction also requires the Department to provide an accounting of all funds received as representative payee of the class members and orders the creation of a "common fund" from which to pay the claims of children whose Social Security benefits had been wrongly taken by the Department.

The Department appealed, and the Washington Court of Appeals immediately certified the case to the Washington Supreme Court, which accepted the certification. The Washington Supreme Court stayed the trial court's order during the pendency of the appeal.

2. The Washington Supreme Court's remand for further findings. After extensive briefing by Respondents, the Department, and the Social Security Administration as amicus, the Washington Supreme Court remanded the case

---

3. Although the Social Security Administration continues to assert that state agencies can compel private representative payees to turn over Social Security benefits they receive on behalf of children in foster care, the Department has abandoned that position and agrees that it improperly attempted to force Ms. Pierce to surrender Danny's benefits.

to the trial court for additional findings of fact regarding the Department's specific practices, the number of children in foster care, and the number of children in foster care receiving Social Security benefits. On remand, the trial court entered additional findings of fact, based primarily on the stipulations of the parties. (A-46 through A-111.) Among other facts, the trial court found that the Department reduces its budget request by the amount it anticipates it will receive as representative payee; that the Department applies to be representative payee for the sole purpose of obtaining money to offset the cost of foster care; that the Department sometimes "sweeps" accounts by using accumulated benefits to pay for all of the State's past foster care expenses; and that the Department may "double dip" by reimbursing itself for expenses already paid for by the federal government or by parents. (A-55 ¶¶ 22, 23; A-69 ¶ 82; A-70 ¶ 88.) *See* 145 Wash. 2d at 16, 32 P.3d at 274.

3. The Washington Supreme Court's ruling after remand. After remand, the Washington Supreme Court held that the reimbursement practices of DSHS as representative payee violate § 407(a). After reviewing the State statutes and regulations governing DSHS's use of Social Security benefits received on behalf of children in foster care against the backdrop of the federal laws governing representative payees, the Court concluded that the "facial logic of [the Department's] reimbursement scheme demonstrates a creditor relationship, a relationship involving creditor-type acts, vis-a-vis foster children and their SSA benefits." *Id.* at 18, 32 P.3d at 275.

The majority also questioned whether, apart from any violation of § 407(a), the use of Social Security benefits to reimburse State public assistance funds was consistent with a representative payee's obligation to use the funds in the best interests of the beneficiary. 145 Wash. 2d at 24, 32 P.3d at 278.

> Using this money for the care and maintenance of the beneficiary, as required under 20 C.F.R. 404.2035(a), would indeed be in the best interest of the beneficiary, but that is significantly different from using the money to reimburse the State for payments it made for the care and maintenance of the foster child — especially when that payment to the State cannot be legally compelled and, moreover, could be used or conserved for other special needs of the child.

Id.

In summarizing its holding, the court concluded that DSHS's acts of reimbursement were those of a creditor or were a "creditor-type action" preempted by § 407(a). The court found that DSHS's status as representative payee did not change the analysis of its ability to use the Social Security benefits it received as reimbursement.

Three justices concurred in part and dissented in part. The concurrence agreed with the majority that the practices of the Department were unlawful because the Department acted as a creditor when it "impermissibly used social security funds to reimburse itself for *past due* foster care payments" and for "other expenses not directly related to current maintenance." 145 Wash. 2d at 27, 33, 32 P.3d at 279, 282. The concurrence found that DSHS violated federal law by putting its need for reimbursement ahead of the needs of the foster children thus creating a fundamental conflict between its roles as representative payee and creditor. *Id.* at 30, 32 P.3d at 281. The concurrence diverged from the majority, however, based on its belief that under the federal regulations, the Department could use Social Security benefits to pay for current maintenance costs, "*provided that any special needs of the children are satisfied first.*" *Id.* at 27, 32 P.3d at 279 (emphasis added). The concurrence also criticized DSHS for violating federal law by reimbursing itself for administrative expenses unrelated to current care.

D. The Stay

DSHS applied for a stay of the Washington Supreme Court's mandate. After calling for a response and receiving the views of the Solicitor General, the Court granted a stay pending action by the Court on the Department's petition for certiorari.

REASONS FOR DENYING THE WRIT

A. The Question Presented As Stated By Petitioner Was Not The Question Resolved By The Washington Supreme Court's Decision Below And The Petition Assumes And Relies On Facts That Were Not Presented To The Washington Supreme Court.

The question presented as proposed by Petitioner is critically distinct from the question considered by the Washington Supreme Court. Petitioner asserts that the question presented is whether, as a general matter, representative payees violate § 407(a) of the Social Security Act when they use benefits to pay current maintenance costs of the beneficiary. The Washington Supreme Court, however, framed the issue much more narrowly. It understood the question to be whether the Washington Department of Social and Health Services violated § 407(a) when that Department used the Social Security benefit payments it received on behalf of foster children in the State of Washington to reimburse the State for costs incurred by the foster care program. The Washington Supreme Court's analysis and decision focused specifically on the nature of the duties and responsibilities of the Department, the statutes and regulations governing the Department, the administration of the foster care program in the State of Washington, and the statutes and regulations governing the obligations of children in foster care in reaching its conclusion.

Several points in the Washington Supreme Court's decision confirm that the Court was focused on the conduct of the Washington Department of Social and Health Services and not on the authority of representative payees in general. At the beginning of its opinion, the court describes the issue presented to be: "Does *DSHS* violate 407(a) of the Social Security Act when, as representative payee under 405(j) of the Act, it uses Social Security benefits to pay current maintenance costs of children in foster care?" 145 Wash. 2d at 4, 32 P.3d at 268 (emphasis added). Although this formulation of the question hints at the more general issue DSHS contends the court decided, the remainder of the opinion confirms the contrary. The 8 pages that follow provide a detailed description of the statutes and regulations of the State of Washington that govern the provision of foster care services and the duties and obligations of the Department, including a description of the State's "cost recovery policy." After briefly describing the Social Security regulations applicable to representative payees, the Court then returns to a description of the activities of the Department in administering the Social Security benefits received on behalf of children in foster care.

In announcing its holding, the Court states: "DSHS's actions as representative payee violated 42 U.S.C. § 407(a)." 145 Wash. 2d at 16, 32 P.3d at 274. In describing the "crucial question," the court makes clear that it is the nature of DSHS's particular reimbursement scheme that is determinative of the issue before it:

> Whether DSHS acts as a creditor when it reimburses itself for foster care costs out of the foster children's Social Security Administration (SSA) entitlements is the crucial question. If DSHS's reimbursement scheme is that of a creditor, the antiattachment provisions of § 407(a) apply and DSHS's cost recovery policy runs afoul

> of a federal statute which preempts state law under the Supremacy Clause of the United States Constitution.

145 Wash. 2d at 17, 32 P.3d at 275 (citation omitted).[4]

The court concludes that the scheme utilized by DSHS, pursuant to Washington State statutes and regulations, does establish DSHS as a creditor of the children in foster care:

> As DSHS presently conceptualizes the matter, RCW 74.13.060 (and its implementing regulation, former WAC 388-70-069) requires it to reimburse itself for the public assistance it has meted out to foster children from money, including SSA entitlements, that come into the children's possession. If the Legislature and DSHS did not hold the costs of foster care were somehow "owed" back to the taxpayers, it would not claim the right of DSHS to "reimburse" itself on the taxpayer's behalf.
>
> . . . .
>
> Accordingly we hold each instance of reimbursement makes DSHS a creditor, or, if not a creditor, then at least committed to a creditor-

4. The Petition asserts that the Department does not reimburse past costs from Social Security benefits and describes a system that carefully uses benefits to refund the cost of care incurred in the preceding month only out of benefits received for that particular month. Unfortunately, the record in this case, comprised almost entirely of facts stipulated by the parties in response to the Washington Supreme Court's request for additional information on how the Department used the foster children's Social Security benefits, fails to provide any support for the description of the Department's accounting practices offered to this Court. That Petitioner relies on a description of its practices that was not submitted to the Washington Supreme Court is another reason why the Petition for Certiorari should be denied.

> type action that is preempted by the "broad bar" of § 407(a).

145 Wash. 2d at 23, 25, 32 P.3d at 278.

The majority then goes on to express "serious[] doubt" as to whether DSHS's use of Social Security benefits "to reimburse the state for its public assistance expenditure is in all cases, or even some, 'in the best interests of the beneficiary.'" *Id.* at 24, 32 P.3d at 278.

Nothing in the Washington Supreme Court's opinion suggests a conclusion that representative payees are generally barred by federal law from utilizing Social Security benefits to pay current maintenance of beneficiaries. Instead, its opinion was wholly focused on the debtor-creditor relationship it found that State statutes and regulations created between DSHS and those children in foster care that received Social Security benefits.[5] If the Washington Supreme Court believed that representative payees generally could not use Social Security benefits to pay for current maintenance, its remand for further factual findings about the specific practices of the Department and its detailed examination in its opinion of the actual policies and procedures of DSHS would have been wholly unnecessary.

5. The concurring Justices of the Washington Supreme Court agreed substantially with the majority's analysis that Washington law required DSHS to act as a creditor of children in foster care in violation of the Social Security Act.

> I agree with the majority that in relying on RCW 74.20A.010, DSHS has given preference to the interests of the taxpayer over the special needs of foster children and has acted as creditor by reimbursing itself for past payment of foster care, directly contrary to §§ 405(j) and 407(a) of the Social Security Act.

145 Wash. 2d at 32-33, 32 P.3d at 282.

The Washington Supreme Court's conclusion that State law requires DSHS to act as the creditor of children in foster care who receive Social Security benefits does not warrant certiorari review by this Court. *See* Supreme Court Rule 10 ("A petition for a writ of certiorari will be granted only for compelling reasons."). Moreover, DSHS asks this Court to review a question that was not decided by the Washington Supreme Court. Certiorari should not be granted to answer a hypothetical question that was not the basis of the ruling below. *See Conway* v. *California Adult Auth.*, 396 U.S. 107, 110 (1969) ("Were we to pass upon the purely artificial and hypothetical issue tendered by the petition for certiorari we would not only in effect be rendering an advisory opinion but also lending ourselves to an unjustifiable intrusion upon the time of this Court.").

B. *Keffeler* Does Not Present A Split of Authority; The Washington Supreme Court's Decision Rests On Factual Conclusions That Distinguish Keffeler From Those With Which It Is Asserted To Conflict.

1. *Mason, King,* and *C.G.A.* The Department contends that this case is ripe for certiorari as it "squarely conflicts" with decisions of other courts, including *Mason* v. *Sybinski*, 280 F.3d 788 (CA7 2002); *King* v. *Schafer*, 940 F.2d 1182 (CA8 1991), *cert. denied sub nom. Crytes* v. *Schafer*, 502 U.S. 1095 (1992); and *C.G.A.* v. *Alaska*, 824 P.2d 1364 (Alaska 1992). (Cert. Pet., p.17.) Although these cases all involve the application of § 407(a) within the context of a State representative payee, they do not address the key issue in *Keffeler*: whether a state can comply with its fiduciary duty as representative payee to administer Social Security benefits in a child's best interest while simultaneously acting under state laws and regulations that require that it transfer to the state treasury all Social Security benefits received on behalf of a child in foster care without regard to the needs of the child.

Keffeler is harmonious with *Mason*, *King*, and *C.G.A.* on the issues raised in the petition. All agree that (1) neither the Social Security Act nor the regulations contain a *per se* bar against a state serving as representative payee, and (2) a representative payee may use Social Security benefits to pay for current maintenance if doing so is in the beneficiary's best interest.

Keffeler goes further to address two issues not presented in those cases: (1) whether the cost recovery policy dictated by Washington State statutes and regulations violates § 407(a), and (2) whether it is in the best interest of a foster child to apply Social Security funds to reimburse general state public assistance. *Mason*, *King*, and *C.G.A.* simply do not address and provide no analysis relevant to the first point, as they did not involve a legislative and regulatory scheme commanding the transfer of the benefits to the state treasury regardless of the best interest of the beneficiary. As to the second point, these three cases are so factually dissimilar to the foster care scheme at issue in *Keffeler* that they neither conflict with *Keffeler* nor offer any insight into whether reimbursement under the Washington foster care violates the anti-attachment clause or could ever be in a child's best interest.

First, *Mason*, *King*, and *C.G.A.* all arose in the context of institutional care, and accordingly fall under a different subsection of the regulations than does Washington's foster care scheme. In *King* and *Mason*, the plaintiffs were residents of state mental hospitals, while C.G.A. was incarcerated in a "youth center." In *King* the state department of mental health had been appointed and acted as the plaintiffs' representative payee,[6] while in *Mason* it was the state hospital itself, and in

6. Just as in *Keffeler*, there was a subclass of plaintiffs in *King*, who had private representative payees. As did the Washington court, the Seventh Circuit held that the State violated § 407(a) when it threatened to use legal process against these representative payees to collect SSI benefits for reimbursement of the costs of care.

C.G.A., it was the Division of Family and Youth Services. In each of these cases, the state assessed the plaintiffs (or in the case of *C.G.A.*, his mother) for the cost of their care.

The state agencies and hospital discussed in *Mason, King,* and *C.G.A.* were governed by different regulations than those applicable to DSHS. Ordinarily, the institutions in *Mason, King*, and *C.G.A.* would have been prohibited from serving as representative payees because they were creditors providing "goods or services for consideration." 42 U.S.C. § 405(j)(2)(C)(i)(III). The regulations specifically exempt, however, "a facility that is licensed or certified as a care facility under the law of a State or a political subdivision of a State," and "a person who is an administrator, owner, or employee of a facility referred to [*supra*] if such individual resides in such facility, and the certification of payment to such facility or such person is made only after good faith efforts . . . to locate an alternative representative payee." 42 U.S.C. §§ 405(j)(2)(C)(iii)(III) & (IV). Although the Commissioner for the Social Security Administration argued in its amicus brief to the Washington Supreme Court that DSHS is "like" a licensed state care facility, DSHS is not a "licensed or certified care facility" and cannot rely on the exemption provided by §§ 405(j)(2)(C)(iii)(III) & (IV). *See* Amicus Br. of Kenneth Apfel, submitted as a lodging, L-4, 12.

Perhaps an even more important distinction that can be drawn between the institution cases and foster children is that the regulations specifically provide that when a beneficiary is institutionalized "because of mental or physical incapacity" "current maintenance" is defined to include "the customary charges made by the institution." 20 C.F.R. § 404.2040(b). Accordingly, in *King* and *Mason*, the institutions' standard monthly bills fell within "current maintenance" under the regulations and were properly payable, if it were in the beneficiary's best interest to do so. Under § 404.2040(a), applicable to non-institutionalized beneficiaries, there is no

provision for the payment of a flat monthly fee; rather funds are to be expended on actual costs of care.

Second, in *King*,[7] it appears that at least some of the plaintiffs needed to "spend down" their SSA benefits in order to qualify for Medicaid.[8] Under Social Security regulations, SSA benefits are included as income in calculating an individual's Medicaid eligibility. If an individual would be eligible but for the fact that his income exceeds the income limitation, he may qualify for medical assistance if he "spends down" his income by expending it on medical costs. 42 C.F.R. §§ 435.700 - 845. Accordingly, it may be in a beneficiary's best interest to spend down his income by reimbursing the state for the cost of his institutionalization, if doing so allowed him to qualify for Medicaid.[9] This issue did not arise in *Keffeler*.

---

7. *King* involved a class of plaintiffs who had been involuntarily committed to the care and custody of the Missouri Department of Mental Health after being adjudicated not guilty by reason of "'mental disease or defect.'" 940 F.2d at 1183-84. Each of the plaintiffs received monthly Social Security benefits after having been determined to be totally disabled due to mental illness. *Id.* at 1184. The opinion does not reveal whether the plaintiffs were receiving SSA Social Security insurance benefits or Title XVI Social Security disability benefits. As the opinion refers to 20 C.F.R. § 404.2010, a regulation addressing SSA recipients, at least some of the plaintiffs must have been receiving SSA benefits. Subject to certain restrictions, all persons receiving SSI are eligible to receive Medicaid. 42 C.F.R. §§ 435.120, 435.121

8. Although the opinion does not discuss the Medicaid issue explicitly, the court's reference to the $30 personal expense allowance indicates that the Medicaid Social Security regulations were at issue. *See id.* at 1184 ("Pursuant to Social Security Administration guidelines, thirty dollars of each patient's monthly benefit is available for personal expenses.")

9. It appears that the non-institutional representative payees refused to do so. The court held the State could not coerce those representative payees into paying over the benefits because to do so would violate § 407(a).

King and *Mason* are also distinguishable from *Keffeler* because in assessing the best interest of the beneficiary, the *King* and *Mason* representative payees considered the beneficiary's personal needs before determining what amount to apply toward the cost of institutional care.[10] In *King*, the plaintiffs were allowed to retain a personal allowance of at least $30 per month.[11] In *Mason*, the plaintiff was allowed to keep approximately $100 per month before her monthly benefits were applied toward the cost of care. In upholding Indiana's practice, the Seventh Circuit panel found: "Indiana hospitals follow carefully the SSA's guidelines regarding use of recipients' benefits. They apply a portion of the money to recipients' personal needs — clothing, spending money, and the like — and only then do they apply a portion of the benefits to institutional costs." 280 F.3d at 793.

In contrast, the trial court in *Keffeler* made a finding of fact that there was no uniform system in place to ensure that a child's special needs were being considered. (A-59 ¶ 41.) A review of the random sampling of foster children (appended to the Findings of Fact) demonstrates that some children did not receive a single disbursement while in foster care, often over a period of several years. (A-60 ¶ 47.)

2. *Nelson* and *Mellies*. The Department further argues that *Keffeler* presents a split of authorities because it is "in substantial tension" with *Mellies* v. *Mellies*, 815 P.2d 114 (Kan. 1991) and *In re Guardianship of Nelson*, 547 N.W.2d

10. *C.G.A.* does not address this issue, as the case was referred to the Social Security Administration for an initial determination.

11. This amount was likely mandated by 42 C.F.R. § 435.735(c)(1). If an individual receiving SSI benefits resid for more than 30 days in a "public institution" that is a "medical care facility" where Medicaid pays more than 50% of the cost of care, his benefits are reduced to $30 per month. 20 C.F.R. §§ 416.211(b) and 416.414. Social Security SSI regulations further provide that the $30 cannot be used other than for the beneficiary's personal needs, and not for current maintenance.

105 (Minn. Ct. App. 1996). (Cert. Pet., p. 20.) *Mellies* and *Nelson* address whether it is appropriate for a parent, acting as representative payee, to use a child's Social Security benefits for the cost of the child's care in light of the parent's obligation to support the child. The Kansas and Minnesota courts held that it was permissible for the parent to spend the funds on the child's current needs rather than conserve them for future use.

Again, these cases stand only for a proposition not inapposite to *Keffeler* — it is permissible under the Social Security Act and regulations for a representative payee to use Social Security benefits to pay for current maintenance if it is in the child's best interest to do so. The parents in these cases were not under a legislative mandate to conserve their own funds, were not accused of failing to identify and meet any special needs of the child, and were not found to have used the funds for expenses unrelated to current care or the special needs of the child. The parents therefore were not acting under the same conflict of interest presented in *Keffeler*. Moreover, in these cases the children's benefits were used for current costs directly attributable to the child, not to repay an asserted debt. *Keffeler* would not prohibit a Washington State parent serving as representative payee from using his child's benefits to pay for current maintenance and therefore presents no conflict with *Mellies* and *Nelson*.

C. *Keffeler* Is Fully Consistent With The Regulations Adopted By The Social Security Administration.

Keffeler is consistent with and in fact advances the goals and policies underlying the regulations adopted by the Social Security Administration, which specifically require that the representative payee use Social Security payments "in the best interests of the beneficiary." 20 C.F.R. § 404.2035; *see also* 20 C.F.R. § 404.2021 ("Our primary concern is to select the payee who will best serve the beneficiary's interest.")

The Department correctly notes that Social Security payments may permissibly be used for the "use and benefit of the beneficiary if they are used for the beneficiary's current maintenance," including "cost incurred in obtaining food, shelter, clothing, medical care, and personal comfort items." 20 C.F.R. § 404.2040. (Cert. Pet., p. 5.) This regulation is permissive, however, not mandatory, and such expenditures are subject to the overall requirement that all payments made by a representative payee *must* be used "in the best interest of the beneficiary." 20 C.F.R. § 404.2035. The Department, however, contrary to the mandate of the federal regulations, is *required* by the Washington Administrative Code § 388-25-0210 to use the children's Social Security to offset the State's foster care costs without regard to or consideration of "the best interest of the beneficiary."[12] As both the majority and minority opinions of the Washington Supreme Court held, this requirement results in an unlawful subordination of the Department's fiduciary duty as representative payee to act in each child's best interest to the interest of the State as a creditor. The Washington regulations, not the *Keffeler* decision, directly conflict with the regulations of the Social Security Administration applicable to representative payees.

Moreover, rather than use payments in "the best interest of the beneficiary" or toward costs incurred in obtaining food, shelter, clothing, medical care, and personal comfort items,

12. The concurring and dissenting justices of the Washington Supreme Court also found that Washington's cost recovery policy requiring DSHS to conserve expenditure of State public assistance funds on foster care and thus lighten the burden on taxpayers created a further conflict with DSHS's obligations as representative payee. *See* Wash. Rev. Code § 74.20.010 ("It is the responsibility of the state of Washington through the state department of social and health services to conserve the expenditure of public assistance funds, whenever possible, in order that such funds shall not be expended if there are private funds available or which can be made available by judicial process or otherwise to partially or completely meet the financial needs of the children of this state.").

the Department uses the Social Security payments to offset the general costs of the State's foster care program and for expenses that are unrelated to current maintenance. As found by the trial court, "[f]or the sole purpose of obtaining reimbursement for foster care costs, DSHS applies to the Social Security Administration to be appointed representative payee for all children in foster care who are eligible for social security benefits." (A-125.) *See also Keffeler*, 145 Wash. 2d at 16, 32 P.3d at 274. The Department has presented no evidence throughout this protracted litigation that it "makes any regular, systematic or uniform attempt, on a monthly basis or otherwise, to determine what 'extra items' and/or 'special needs' would directly benefit the children in State foster care before applying the SSA and SSI funds, in its control, to reimburse" general foster care costs. (A-59 ¶ 41.)

The Department's practice of allocating all Social Security payments to its own budget also plainly runs afoul of 42 U.S.C. § 407(a), which provides in pertinent part that the "right of any person to any *future* payment under this subchapter *shall not be transferable or assignable*, at law or in equity." (emphasis added); (A-55 ¶¶ 22, 23) ("In developing the amount of the State's funds needed to make up the balance of the total foster care budget the State includes as part of its revenue resources, SSA and SSI payments anticipated to be received by DSHS as representative payee. The State's inclusion of anticipated SSA and SSI children benefit payments in the State budget reduces the amount of money that the legislature is required to appropriate to meet the State's foster care expenditure responsibilities."). By assigning the beneficiary's future payments to its own budget in advance of payment and thereby allocating the benefits to its general foster care budget, the Department assigns to the State the beneficiary's right to future payments.

The Department's practice of sweeping children's accounts and "double dipping" further illustrates the

Department's contravention of the letter and policies of the federal regulations. Rather than pay for "current maintenance," DSHS sweeps lump sum Social Security benefits into the State treasury to reimburse the State for past foster care expenses. (A-63 ¶ 58) ("'Account sweeping' sometimes results in taking all the Social Security funds, which have accumulated to that date, and applying them to all of the State's accumulated reimbursable foster care expenses."). For example, Jasmine Cotton, a foster child for whom the Department served as representative payee, received $11,676.29 in Social Security payments on May 8, 1996 (likely a lump sum Social Security award). On December 2, 1996, a lump sum amount of $11,696.00 in "reimbursements" was deducted from Ms. Cotton's account leaving a balance of $495.42. The State thus *reimbursed* itself for *past* foster care expenses of $11,696.00 dating back to April 1994. Ms. Cotton herself received no account disbursements during her three years in foster care. (A-100 and A-102.)

Finally, in contravention of federal law, the Department likely "double dips" by reimbursing the State for amounts already paid by the federal government under Temporary Assistance for Needy Families, Title IV-E, and parental support. In fact, "[t]he head of the Trust Fund Unit has known, since at least 1994, . . . that it potentially reimburses itself twice for the same months foster care expenses, once through use of the foster child's SSA and SSI money and once from parental support payments." (A-69 ¶ 81; *see* A-69 ¶ 82) ("The State may experience a double payment when it 'sweeps' the children's trust fund account to repay reimbursable foster care expenses which have accumulated from prior months where child support has already been paid."). *See also Keffeler*, 145 Wash. 2d at 31, 32 P.3d at 282 ("This sweeping of lump sums not only is unauthorized under any exception to § 407(a), but also often constitutes double reimbursement. The sums 'swept' to the treasury frequently

reimburse the state for amounts already paid by the federal government under Temporary Assistance for Needy Families or paid by parental support. DSHS apparently keeps no accurate record to allow tracing of the 'swept' sums."). Despite its uncontroverted knowledge of this double dipping, the State has not remedied its unlawful practice, which cannot be justified even under the Department's own interpretation of the Social Security Administration regulations.

The array of regulatory violations committed by DSHS counsels against a grant of certiorari in this case. DSHS's practices and procedures fail scrutiny even under its own conceptualization of the law and make this case a muddled mess. The scope and nature of the violations confuses the identification of the precise ground for the Washington Supreme Court's decision and limits the impact any decision this Court might render on the question presented as stated in the petition. To the extent the Court is interested in bringing additional clarity to the permissible conduct of states as representative payees, it should await the presentation of that question in a cleaner case.

D. The *Keffeler* Decision Affects Only The State Of Washington And Does Not Present A National Question.

The Department contends that "this case presents an important national question." (Cert. Pet., p.23.) Contrary to the government's suggestion, however, the *Keffeler* decision affects only the administration of Social Security benefits to foster children for whom DSHS serves as representative payee in the State of Washington. The decision in no way calls into question the way public agencies in *any* other state fulfill their roles as representative payee, nor does it diminish the incentive of governmental agencies to act in that capacity.

Instead, the *Keffeler* decision invalidates the way in which the Department, acting pursuant to the mandate of Washington statutes and regulations, is *required* to use the

children's Social Security benefits to reimburse the State for foster care costs in order to reduce the fiscal burden of the Washington taxpayers. Unlike representative payees in other states, the Department is deprived of any and all discretion to use the benefits "in the best interest" of the beneficiary. In its petition for certiorari, the Department does not expressly or impliedly contend that any other state is required by statute or regulation to act in a similar manner. The Department nonetheless would have this Court believe that the decision of the Supreme Court of Washington, which considered and enjoined *only* the actions of the Department in the State of Washington as it acts pursuant to Washington statutes and regulations, somehow will impact not only states serving as representative payees for foster children in their care, but also "every representative payee appointed by the Commissioner." (Cert. Pet., p.24.) This unsubstantiated claim cannot find support in the record or in the decision of the Washington Supreme Court.

In an effort to make this case appealing to the Court, the Department exaggerates its importance and universal impact. Although it may be true that other states that serve as representative payee use certain portions of a Social Security beneficiary's funds to offset the costs of current maintenance, that practice was not called into question by *Keffeler*. Instead, in *Keffeler*, the trial court made very specific findings of fact with respect to the Department's practices in the State of Washington, as it acts pursuant to Washington statutes and regulations, and the Washington Supreme Court thereafter held that the practices *of the Department in the State of Washington* are unlawful. In the face of this limited holding, the Department's contentions that this case impacts any agency or representative payee outside of the State of Washington does not support granting certiorari here and should summarily be rejected.

E. *Keffeler* Was Correctly Decided.

In *Philpott* v. *Essex County Welfare Board*, 409 U.S. 413 (1973), and *Bennett* v. *Arkansas*, 485 U.S. 395 (1988), this Court held that a state's use of Social Security benefits to reimburse itself for the cost of incarceration or welfare benefits violated § 407(a)'s anti-alienation provision, rejecting the state's arguments that it was entitled to such reimbursement because it was providing "care and maintenance" to the beneficiaries. *Philpott*, 409 U.S. at 416; *Bennett*, 485 U.S. at 397-98.

The position argued by the State of Washington — that a representative payee is free from the strictures of § 407(a)[13] — is incorrect. Section 407(b) states that "[n]o other law . . . may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section." 42 U.S.C. § 407(b). Section 405(j) does not contain the required reference to § 407, and accordingly, does not except representative payees from the anti-alienation provision. The fact that the Department is the same entity wearing two hats — that of representative payee and that of service provider — does not mean that it is free from compliance with § 407(a). To the contrary, under the Washington scheme, even if the Department desired to regulate itself, its mandate to conserve welfare benefits places it under a conflict of interest that makes compliance with both state and federal law impossible. As stated by the Washington Supreme Court, "[i]f DSHS is allowed under § 405(j) to become a representative payee for the foster children, that fact does not establish the legality of taking the child's money." 145 Wash. 2d at 22-23, 32 P.3d at 277.

Taking the child's money is exactly what the Department does, both by allocating anticipated Social Security benefits

13. *See* Solicitor General's Amicus Br. at 20; Application for Stay at 16.

to its operating budget in violation of § 407(a)'s prohibition of the transfer or assignment of future benefits, and by reimbursing Children's Administration for foster care-related expenses from the funds it holds as representative payee through the Trust Fund Division, essentially allowing the funds to be subject to the claims of a creditor. The Department attempts to downplay the transfer to Children's from Trust Fund by claiming that it is a reimbursement "only in the accounting sense." (Cert. Pet., p.27.) Reimbursement is an accounting procedure, and to term it as such does nothing to change its character or the fact that it is prohibited by § 407(a).[14]

Section 405(j) does not provide a basis for upholding DSHS's cost reimbursement policy. Under § 405(j) and the accompanying regulations, benefits must be used not only for the "current maintenance" of the beneficiary, but also in the beneficiary's best interest. *See* 20 C.F.R. § 404.2035 ("A representative payee has the responsibility to (a) use the payments he or she receives only for the use and benefit of the beneficiary *in a manner and for the purposes he or she determines . . . to be in the best interests of the beneficiary. . . .*") (emphasis added). Even after concluding that an expense properly falls within "use and benefit," to fulfill its fiduciary duty, a representative payee must also assess whether an expenditure would be in the best interest of the beneficiary. There is no indication in the record or in the Department's briefing that it exercised any discretion in deciding to expend the children's funds on reimbursing the State rather than address other needs or conserve funds for the future.

---

14. While an expense may be allowed by direct expenditure, it is barred once it takes on the nature of a debt. *See Conaway* v. *Social Servs. Admin.*, 471 A.2d 1058, 1063 (Md. App. 1984) ("As the Supreme Court has made clear, a state agency has no authority to take lump sum federal benefits and use them for reimbursement for past care. The State had an obligation to provide for Conaway; it cannot now seek reimbursement from funds which it could have used, but chose not to.").

While the failure to exercise the required discretion is a possibility anytime a representative payee is appointed, it was a certainty in this case because the Department was simultaneously acting under a legislative mandate to conserve public welfare funds and lessen the burden on state taxpayers. As indicated by the State's upfront budgetary allocation, it anticipated that it would use the children's SSI/SSA benefits in full to offset its overall foster care operating budget, unquestionably electing to fulfill its State legislated duty to conserve to the detriment of its duty to the children to use their benefits in their best interest. This fact is further supported by the fact that DSHS did not have a system in place to ensure that children's special needs were being met, or to notify social workers that these funds were even available.

The Department claims that it is permissible for a payee to satisfy a pre-existing debt "if the current and reasonably foreseeable needs of the beneficiary are met." Problematic to this approach, however, is the fact that the Washington courts found that there was no procedure in place to ensure that foster parents and social workers were aware that a child may have funds available for special needs. Jasmine Cotton, discussed above, received no special disbursements in her three years of foster care. It would be remarkable indeed that she had no needs that would have taken priority over the repayment of a debt.

By billing the children for the myriad of cost associated with their foster care and applying their SSI and SSA benefits to recoup these costs, the Department acts as a creditor. Regardless of the fact that it serves as representative payee, the Department cannot take the children's money to pay costs outside of those specifically provided for by the Social Security Act and regulations. To do so is simply a violation of § 407(a).

The Department argues that its scheme should not be struck down because it could possibly achieve the same economic effect through a different scheme. The fact remains that the current system violates federal law, and this Court rejected a similar "end result" argument in *Philpott*, 409 U.S. at 416, where the State attempted to argue that if the amount of Social Security benefits had been paid monthly, it could have reduced the amount of state welfare benefits and therefore should be able to seek reimbursement for the difference. The Court therein rejected this "implied exception." The Department is free to go to the Washington Legislature and ask that the system be reformed, a course it has not chosen to pursue.

F. The Decision Of The Seventh Circuit In *Mason v. Sybinski* Presents A Better Vehicle For Determining The Rights And Obligations Of States As Representative Payees Than Does This Case.

Because *Keffeler* was resolved by the trial court on motions for summary judgment without making specific findings of fact, the Washington Supreme Court, after hearing oral arguments from the parties, ordered that the case be remanded to the superior court for the record to be supplemented as to certain specified issues. The parties submitted several rounds of briefs as to proposed findings, resulting in the 98 findings of fact issued by the trial court. Although these findings are extensive, the description of how DSHS's cost reimbursement scheme works remains incomplete and is complicated by evidence that DSHS employed different procedures over the time frame covered by this case. Moreover, Petitioner, in making application to this Court, presents significant details that are found nowhere in the record. For example, Petitioner contends that it seeks reimbursement in March for the costs it incurred in January, but limits itself to the benefits received for the month of January. (Cert. Pet., p.10.) The record, however, provides no such detail and appears to affirmatively contradict that assertion. (A-56 ¶¶ 27, 28, 29.)

In contrast, the decision of the Seventh Circuit in *Mason* v. *Sybinski*, 280 F.3d 788 (CA7 2002), presents less complex facts on a cleaner record. Moreover, the issue raised in *Mason*, whether a state hospital's application as representative payee of that portion of a resident beneficiaries' benefits remaining after satisfying special needs to its own costs, absent that beneficiary's consent, was "other legal process" in violation of § 407(a), comes much closer to the question DSHS asks the Court to decide in this case. Counsel for Respondents have been informed that a petition for certiorari will be filed in *Mason* on or before May 11, 2002.

CONCLUSION

The critical feature of the Washington Supreme Court's analysis is its discernment that DSHS, acting under the directive of State statutes and regulations, was acting as a creditor when it transferred the Social Security benefits of children in foster care to the State treasury to reimburse itself for past due foster care costs, administrative expenses, and expenses already paid by the federal government or by parents of the children, without regard to the best interests or special needs of the individual children. The broader question suggested by Petitioner, whether representative payees generally may use Social Security benefits to pay current maintenance, simply was not addressed by the Washington Supreme Court. Moreover, the Petition relies on a description of how DSHS's reimbursement procedures work that is distinct from that provided to the Washington Supreme Court. Ultimately, the decision of the Washington Supreme Court was driven by its understanding of how specifically DSHS treated the Social Security funds it received. The Court even remanded the case to the trial court for specific findings on DSHS's practices and procedures. The State-specific determinations of the Washington Supreme Court do not warrant this Court's review. Moreover, the Court should decline to grant certiorari to review a question that was not

decided by the Washington Supreme Court, especially on a Petition that makes important factual assertions not supported by the record.

Respectfully submitted,

RICHARD B. PRICE
P.O. Box 1687
Omak, WA 98841
(509) 826-5110

RODNEY M. REINBOLD
P.O. Box 751
Okanogan, WA 98840
(509) 422-3610

TERESA WYNN ROSEBOROUGH
Counsel of Record
DAVID I. ADELMAN
DEBORAH M. DANZIG
JENNIFER N. IDE
SUTHERLAND ASBILL
& BRENNAN LLP
999 Peachtree Street, N.E.
Atlanta, GA 30309-3996
(404) 853-8000

Attorneys for Respondents

(6)

Supreme Court, U.S.
FILED
MAY 7 2002
OFFICE OF THE CLERK

NO. 01-1420

IN THE SUPREME COURT OF THE UNITED STATES

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, ET AL.,

Petitioners,

v.

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, GUARDIAN, AND OTHER PERSONS SIMILARLY SITUATED,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

REPLY TO BRIEF IN OPPOSITION

CHRISTINE O. GREGOIRE
Attorney General

William Berggren Collins
Sr. Assistant Attorney General
Counsel of Record
1125 Washington Street SE
Olympia, WA 98504-0100
360-753-6245

Walter Dellinger
Pamela Harris
O'Melveny & Myers
555 13th Street NW
Washington, D.C. 20004
202-383-5300

Counsel For Petitioners

10 pp

TABLE OF CONTENTS

REPLY TO BRIEF IN OPPOSITION.....1

1. This Case Presents An Important National Question.....1
2. Keffeler Is In Substantial Conflict With Decisions Of Other Courts.....5
3. Keffeler Conflicts With Social Security Regulations.....7
4. Conclusion.....9

TABLE OF AUTHORITIES

Cases

C.G.A. v. Alaska
824 P.2d 1364 (Alaska 1992) 5

Guardianship Estate of Keffeler v. Department of Soc. & Health Servs.
45 Wash. 2d 1, 32 P.3d 267 (2001) ..... passim

In re Guardianship of Nelson
547 N.W.2d 105 (Minn. Ct. App. 1996)..... 6, 7

King v. Schafer
940 F.2d 1182 (8th Cir. 1991),
cert. denied sub nom. Crytes v. Schafer,
502 U.S. 1095 (1992)..... 5, 6

Mason v. Sybinski
280 F.3d 788 (7th Cir. 2002) 5, 6

Mellies v. Mellies
815 P.2d 114 (Kan. 1991)..... 6, 7

Statutes

42 U.S.C. § 405(j)..... 1

42 U.S.C. § 407(a) 1, 2

Regulations

20 C.F.R. § 404.2040..... 7

20 C.F.R. § 404.2040(a)(1)..... 8

20 C.F.R. § 416.640(a)..... 8

REPLY TO BRIEF IN OPPOSITION

1. This Case Presents An Important National Question

a. The question presented in this case is whether a representative payee, appointed pursuant to 42 U.S.C. § 405(j), violates the anti-attachment provisions of 42 U.S.C. § 407(a) when the payee uses a beneficiary's social security benefits to pay for the beneficiary's current care. In *Guardianship Estate of Keffeler v. Department of Social & Health Services*, 145 Wash. 2d 1, 32 P.3d 267 (2001) (Pet. App. at A-1), the Washington Supreme Court held that § 407(a) prohibits a payee from using the benefits to pay for current care, at least when the payee otherwise would pay for the beneficiary's care itself.

This is an important national question. The significance of the question is confirmed by the amicus briefs filed by the Solicitor General, on behalf of the United States,[1] twenty six states, and the Commonwealth of Puerto Rico; and four national child welfare advocacy groups—the Childrens' Defense Fund, Catholic Charities USA, the Child Welfare League of America, and the Alliance for Children And Families. These briefs recognize the significance of the issue and urge the Court to grant the petition. Indeed, the Solicitor General urged the Court to grant the stay in this case because he concluded that the Court would probably grant the petition and would likely reverse. Br. United States Amicus Curiae at 14-21.

---

[1] Brief For The United States As Amicus Curie filed in response to this Court's order dated February 15, 2002, inviting the Solicitor General to express the views of the United States with regard to the Petitioners' application for a stay.

b. Respondent Estate of Keffeler (the Estate) makes essentially two arguments to avoid certiorari. The Estate's primary argument is that the holding in *Keffeler* is narrow—limited to the application of Washington statutes and regulations. Br. Opp. at 10-14. The Estate's characterization of the Washington Supreme Court's opinion is wrong.

The linchpin of *Keffeler's* analysis is that Washington will pay for a foster child's care itself if social security benefits are not available. It is this point--not Washington statutes and regulations—that the court relied on to justify its conclusion that the Department of Social & Health Services (the Department) violated § 407(a). The court held that "reimbursement is barred by § 407(a) because despite [the Department's] status as representative payee *it performs the role of creditor when it takes the foster child's SSA entitlement to reimburse itself for moneys spent on the child*". Pet. App. at A-25 (emphasis added). The Washington statutes and regulations on cost recovery were not determinative. Indeed, according to the Washington Supreme Court, the "thrust of the case law is that Social Security benefits are, for all intents and purposes, beyond the reach of the state, however clever or subtle its attempt to seize them". Pet. App. at A-23. Thus, even if Washington had no statutes or regulations on cost recovery, *Keffeler* would find a violation of § 407(a) if the Department used the benefits to pay for the beneficiary's current care.

Keffeler also relies on the fact that Washington will pay for a foster child's care to support its conclusion that the Department is not acting in the beneficiary's best interest. According to *Keffeler*, "the child is better off with any payee other than the state because [the Department] must provide

foster care under state law *regardless* of whether it receives a reimbursement". Pet. App. at A-19 (footnote omitted). This led to the court's doubt that "using the [social security] benefits to reimburse the state for its public assistance expenditure is in all cases, or even some, in the best interests of the beneficiary". Pet. App. at A-28 (internal quotation marks omitted). *Keffeler's* conclusion that it is not in a child's best interest to use the benefits to pay for current care is not dependent upon state statutes and regulations.

In sum, *Keffeler* is not the narrow decision the Estate claims it is. *Keffeler* announces a broad rule that § 407(a) prohibits a representative payee, who is responsible for paying for a beneficiary's current care, from using social security benefits to pay for the beneficiary's current care. The amicus briefs filed in this case reflect the substantial national concern over the breadth of *Keffeler's* holding. This case presents a substantial question that should be resolved by this Court.

c. The Estate's second argument against certiorari is its claim that the Department is guilty of an array of regulatory violations. According to the Estate, the "scope and nature of the violations confuses the identification of the precise ground for the Washington Supreme Court's decision". Br. Opp. at 23. But as discussed above, there is no confusion about the grounds for the *Keffeler* decision. The basis for the Washington Supreme Court's decision is the fact that Washington will pay for foster care even if a child has no social security benefits. The analysis in the majority opinion does not even mention—much less rely

on—the so-called regulatory violations claimed by the Estate. Pet. App. at A-18 to A-29. The Estate is attempting to portray this as a muddled case, but it is not. The question presented is straightforward and clear.[2]

---

[2] In addition to being irrelevant to the decision in *Keffeler* and the question presented, the Estate's claims of regulatory violations are untrue. Indeed, a representative of the Social Security Administration, who conducted an onsite review, described the Department as "a model agency that could stand as a prototype for effective organizational payeeship". Pet. App. at A-78. *See also* Br. United States Amicus Curie at 7 ("We have been informed by the SSA that it reviewed the [Department] in August of 1998 and found no defects in its performance as representative payee.").

Nor is there any support in the record for the Estate's claims of regulatory violations. Br. Opp. at 21-23. The Estate refers to "account sweeping". Br. Opp. at 21-22. However, the negative connotation of that term is greater than its meaning. It is nothing more than lump sum payments used to pay for past care. Accounting records in this case establish that the Department uses lump sum payments to pay for past care when there is a delay in granting social security benefits and that the Department only pays for past care in months for which the social security benefits were retroactively granted. *See, e.g.*, State Ex. 1 Suppl., Def.'s Resp. Pl.'s Order Produce 1, Combs, Miracle and 50 Random Accounting, Combs, Miracle. Moreover, there is no finding that so-called account sweeping is improper. Pet. App. A-63, ¶ 58. The Estate also claims that the Department "double dips" by reimbursing the State for amounts already paid by the federal government. Br. Opp. at 22-23. This is not true. The Department's accounting system is set up to prevent this from occurring. Pet. App. at A-70 to A-71, ¶ 88. Finally, the Estate claims that the Department uses benefits to pay for administrative costs. Br. Opp. at 21. This is also untrue, and the Estate cites to nothing in the record to support it's claim. In fact, the record shows that the Department uses benefits only to pay for a beneficiary's care. Pet. App. at A-56 to A-58, ¶¶ 27-37. The only potential problem identified in the record is that the Department "may" experience a double payment when the Department also receives child support to pay for a foster child's care. Pet. App. at A-69, ¶ 82.

2. Keffeler Is In Substantial Conflict With Decisions Of Other Courts

a. In the petition we explained that *Keffeler* conflicts with *Mason v. Sybinski*, 280 F.3d 788 (7th Cir. 2002), *King v. Schafer*, 940 F.2d 1182 (8th Cir. 1991), *cert. denied sub nom. Crytes v. Schafer*, 502 U.S. 1095 (1992), and *C.G.A. v. Alaska*, 824 P.2d 1364 (Alaska 1992). Pet. at 17-20. The Solicitor General agrees. *See* Br. United States Amicus Curie at 14-16. The Estate now attempts to distinguish these cases by claiming that they do not involve "a legislative and regulatory scheme commanding the transfer of the benefits to the state treasury". Br. Opp. at 15.

This argument fails for two reasons. First, it relies on the Estate's mistakenly narrow reading of *Keffeler*. The basis of the *Keffeler* decision is the fact that Washington will pay for foster care even if a child has no social security benefits. This key fact is also present in *Mason*, *King*, and *C.G.A.* *Mason* concerned patients in a mental hospital. Under state law, if "a person is legally admitted to a state institution . . . she is entitled to care and maintenance there, regardless of her ability to pay. Ind. Code § 12-24-5-4." *Mason*, 280 F.3d at 791. *King* involved plaintiffs who were "involuntarily committed to the care and custody of the Director of Mental Health". *King*, 940 F.2d at 1183. Of course, if the plaintiffs had no assets, the state would have to pay for their care since they were involuntarily committed. Similarly, *C.G.A.* involved a minor who was adjudicated a delinquent and placed at a youth center. *C.G.A.*, 824 P.2d at 1365. Since the minor was placed at a youth center, the state was responsible for his care. Even though the state was required to pay for the beneficiaries' care in *Mason*, *King*, and *C.G.A.*, the courts in those cases held that social security benefits could be used to offset the cost of care. These holdings conflict with *Keffeler*.

The second reason the Estate's argument fails is that it is inaccurate as applied to *Mason* and *King*. Contrary to the Estate's argument, both cases involved state laws requiring beneficiaries to pay for their cost of care. In *Mason*, Indiana law provided that "residents of hospitals and institutions are liable for the cost of their treatment and care. Ind. Code § 12-24-13 (2001)." *Mason*, 280 F.3d at 791. Similarly, in *King*, Missouri law provided that the "plaintiffs and their representative payees are jointly and severally liable for the costs of the plaintiffs' care and treatment. *See* Mo. Rev. Stat. §§ 552.080.3, 630.205.1." *King*, 940 F.2d at 1184. Despite these laws, both *Mason* and *King* held that § 407(a) did not prohibit state representative payees from using benefits to offset the cost of care. These decisions conflict with *Keffeler*, and there is no basis to distinguish them.

b. We also explained in the petition that there is a substantial tension between *Keffeler* and *Mellies v. Mellies*, 815 P.2d 114 (Kan. 1991), and *In re Guardianship of Nelson*, 547 N.W.2d 105 (Minn. Ct. App. 1996). Pet. at 20-23. These cases both involve fathers who had been appointed representative payee for their beneficiary sons. Since the fathers, as parents, were under a legal obligation to support their sons, the question was whether they could use social security benefits to pay for their sons' current care. *Mellies* and *Nelson* both held that the fathers could use the benefits to pay for current care. *Keffeler* reaches the opposite conclusion. Since the Department would pay for a beneficiary's current care in the absence of social security benefits, *Keffeler* concluded that it is not in the beneficiary's best interest to use the benefits to pay for current care.

The Estate's attempt to distinguish *Mellies* and *Nelson* also relies on the Estate's mistakenly narrow view of the holding in *Keffeler*. The Estate argues that the cases are

distinguishable because the "parents in these cases were not under a legislative mandate to conserve their own funds". Br. Opp. at 19. On this basis, the Estate claims that *Keffeler* would not prohibit a parent from using social security benefits to pay for current maintenance. Br. Opp. at 19.

The Estate can only reach this conclusion by disregarding *Keffeler's* reasoning. The Estate does not dispute the fact that parents have a legal obligation to support their children. Given this fact, the logic of *Keffeler* compels the conclusion that a parent representative payee may not use the child's benefits to pay for current care. To paraphrase *Keffeler*, a "child is better off with any payee other than the [parent] because [the parent] must provide . . . care under state law *regardless* of whether [the parent] receives a reimbursement". Pet. App. at A-19 (footnote omitted). Based on this reasoning, *Keffeler* concluded that it is not in the best interest of the beneficiary for the Department to use benefits to pay for current care. The same conclusion would apply to a parent. Yet the application of *Keffeler* to a parent cannot be reconciled with *Mellies* and *Nelson*. Accordingly, the Court should grant review to resolve the tension between these cases.

3. Keffeler Conflicts With Social Security Regulations

In the petition we explained that *Keffeler* conflicts with regulations adopted by the Social Security Administration and the Commissioner's interpretation of those regulations. Pet. at 22-23. The Estate argues that *Keffeler* is consistent with the regulations. Br. Opp. at 19-20. But the Estate's argument on this point actually ignores the actual text of the relevant regulation.

According to the Estate, 20 C.F.R. § 404.2040 provides that benefits may be used for current maintenance, including the costs incurred in obtaining food, shelter,

clothing, medical care, and personal comfort items. But the Estate claims that this rule is permissive and subject to the overall requirement that benefits must be used in the best interest of the beneficiary. Br. Opp. at 20. This argument ignores the actual text of the regulation. 20 C.F.R. § 404.2040(a)(1) states:

> "*We will consider that payments we certify to a representative payee have been used for the use and benefit* of the beneficiary if they are used for the beneficiary's current maintenance. Current maintenance includes cost incurred in obtaining food, shelter, clothing, medical care, and personal comfort items." Pet. App. at A-214 (emphasis added).[3]

Under this regulation, if benefits are used for current maintenance, they have been used for the benefit of the beneficiary. There is no other test to determine whether the use of benefits to pay for current maintenance is proper.

The Estate's interpretation also conflicts with the Commissioner's interpretation of 20 C.F.R. § 404.2040(a)(1). As the Solicitor General explained in this case, because Washington pays "the 'cost[s] incurred in obtaining food, shelter, and clothing for the beneficiaries within the meaning of 20 C.F.R. 404.2040(a)(1) and 416.640(1), it is lawful to use a child's Social Security or SSI benefits to pay for them". Br. United States Amicus Curie at 17.

The conflict between *Keffeler* and the social security regulations provides another substantial reason to grant the petition.

[3] *See also* 20 C.F.R. § 416.640(a), Pet. App. at A-237.

4. Conclusion

For the foregoing reasons, the Petition For A Writ of Certiorari should be granted.

RESPECTFULLY SUBMITTED

CHRISTINE O. GREGOIRE
Attorney General

Walter Dellinger
Pamela Harris
O'Melveny & Myers
555 13th Street NW
Washington, D.C. 20004
202-383-5300

William Berggren Collins
Sr. Assistant Attorney General
Counsel of Record

1125 Washington Street SE
Olympia, WA 98504-0100
360-753-6245

Counsel for Petitioners

(4)

No. 01-1420

Supreme Court, U.S.
FILED
APR 25 2002
CLERK

IN THE

Supreme Court of the United States

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, *et al.*,
Petitioners,

v.

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, GUARDIAN, and other Persons Similarly Situated,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Washington

BRIEF OF CHILDREN'S DEFENSE FUND, CATHOLIC CHARITIES USA, CHILD WELFARE LEAGUE OF AMERICA, AND ALLIANCE FOR CHILDREN AND FAMILIES AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

MICHAEL L. MARTINEZ *
DAVID L. HAGA
BRIDGET K. ALLISON
CROWELL & MORING LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 624-2500

Attorneys for Children's Defense Fund, Catholic Charities USA, Child Welfare League of America, and Alliance for Children and Families

* Counsel of Record

April 25, 2002

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

22 pp

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF *AMICI CURIAE*	1
STATEMENT OF THE CASE	4
SUMMARY OF ARGUMENT	9
ARGUMENT	10
I. THE PETITION SHOULD BE GRANTED BECAUSE THE STATE COURT DECISION ON A QUESTION OF FEDERAL LAW CONFLICTS WITH THE INTERPRETATION OF THE FEDERAL AGENCY CHARGED WITH IMPLEMENTING THE LAW	10
II. REVIEW SHOULD BE GRANTED TO RESOLVE THE CONFLICT CREATED BETWEEN THE STATES ON A QUESTION OF FEDERAL LAW	13
III. REVIEW SHOULD BE GRANTED BECAUSE THIS CASE RAISES ISSUES OF NATIONAL IMPORTANCE REGARDING THE AVAILABILITY AND USE OF SOCIAL SECURITY BENEFITS FOR NEEDY CHILDREN	14
CONCLUSION	18

TABLE OF AUTHORITIES

CASES	Page
Auer v. Robbins, 519 U.S. 452 (1997)	10
C.G.A. v. Alaska, 824 P.2d 1364 (Alaska 1992)	13
Chevron U.S.A., Inc. v. Natural Resources Defense Counsel, Inc., 467 U.S. 837 (1984)	10
In re the Guardianship of Nelson, 547 N.W.2d 105 (Minn. Ct. App. 1996)	14
Mason v. Sybinski, 280 F.3d 788 (7th Cir. 2002)	11, 14
King v. Schafer, 940 F.2d 1182 (8th Cir. 1991)	11, 14
Mellies v. Mellies, 815 P.2d 114 (Kan. 1991)	14
United Food and Chemical Workers Union Local 751 v. Brown Group, Inc., 517 U.S. 544 (1996)	11

STATUTES	
20 C.F.R. § 404.2010(b)	5
20 C.F.R. § 404.2021(b)	5, 15
20 C.F.R. § 404.2035	6
20 C.F.R. § 404.2040(a)(1)	6, 11
20 C.F.R. § 404.2040(d)	6
20 C.F.R. § 404.2045	6
20 C.F.R. § 406.460(a)	11
20 C.F.R. § 416.610(b)	5
20 C.F.R. § 416.621(b)	5
20 C.F.R. § 416.635(a)	6
20 C.F.R. § 416.640(a)	6
20 C.F.R. § 416.645	6
42 U.S.C. §§ 1381, *et seq*	4
42 U.S.C. § 1383(a)(2)(A)(ii)(I)	5
42 U.S.C. § 1383(a)(2)(A)(iii)	7
42 U.S.C. § 1383(a)(2)(B)(i)	6
42 U.S.C. §§ 1383(a)(2)(B)(xi)-(xiii)	6
42 U.S.C. §§ 1383(a)(2)(C)(ii) and (iv)	6
42 U.S.C. §§ 401, *et seq*	5

TABLE OF AUTHORITIES—Continued

	Page
42 U.S.C. § 405(j)(1)(A)	5, 7
42 U.S.C. § 405(j)(2)(A)	6
42 U.S.C. § 405(j)(2)(E)(ii)	6
42 U.S.C. §§ 405(j)(3)(B) and (D)	6
42 U.S.C. § 407(a)	6, 12
Wash. Rev. Code § 13.34.130(2)	4

IN THE

Supreme Court of the United States

No. 01-1420

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, *et al.*,
Petitioners,

v.

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, GUARDIAN, and other Persons Similarly Situated,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Washington

BRIEF OF CHILDREN'S DEFENSE FUND, CATHOLIC CHARITIES USA, CHILD WELFARE LEAGUE OF AMERICA, AND ALLIANCE FOR CHILDREN AND FAMILIES AS AMICI CURIAE IN SUPPORT OF PETITIONERS

INTEREST OF *AMICI CURIAE* [1]

Amici curiae Children's Defense Fund, Catholic Charities USA, Child Welfare League of America, and Alliance for Children and Families (collectively, "*amici*") are national, non-profit organizations dedicated to, among other things, identifying and addressing issues impacting children in the

[1] No counsel for any party had any role in authoring this brief, and no person other than the named *amici* and their counsel made any monetary contribution to its preparation and submission.

United States—including children with special needs and/or disabilities who are in foster care and are eligible for benefits from the Social Security Administration.[2]

For thirty years, the Children's Defense Fund ("CDF") has been advocating to ensure every child in America a Healthy Start, a Head Start, a Fair Start, a Safe Start, and a Moral Start in life and successful passage to adulthood with the help of caring families and communities. CDF pays particular attention to the needs of poor and minority children and those with disabilities. CDF also has long advocated on behalf of children who have been abused and/or neglected and, as a result, sometimes end up in the public foster care system. In its advocacy for children, CDF has seen first-hand the vital role the federal Supplemental Security Income Program plays in securing the futures of children with a wide range of physical, emotional, and mental disabilities.

Catholic Charities USA is one of the nation's largest, private networks of people helping people. Since 1727, when the Ursuline Sisters came from France to New Orleans and opened the first Catholic Charities orphanage, Catholic Charities' network of independent social service agencies and volunteers have been working to reduce poverty, support families, and build communities in the United States. In all, more than 1,400 local Catholic Charities agencies with more than 300,000 staff members and volunteers serve nearly 10 million people in need each year. Many of these Catholic Charities agencies provide direct services to children in the foster care system, including nearly 20,000 children in 1999 alone. In addition, in 1991, Catholic Charities agencies completed 4,384 adoptions, 60% of which were for children with special needs.

---

[2] Counsel for both petitioners and respondents have consented to the filing of this Brief. Pursuant to Sup. Ct. R. 37.2(a), *amici* have filed letters stating such consent with the Clerk of the Court.

The Child Welfare League of America ("CWLA") is an 82-year-old association of nearly 1,200 public and private child and family-serving organizations. Its member agencies collectively serve more than 3 million abused, neglected, and vulnerable children and families every year. Founded in 1920, CWLA has long been involved in the development of quality programs, practices and policies in all areas of child welfare, including provision of services to children in foster care. Virtually all of CWLA's fifty state and approximately 150 local public child welfare agencies serve as representative payees for children eligible for SSI benefits. Other CWLA members, including non-profit direct childcare agencies, on occasion also may serve as representative payees.

The Alliance for Children and Families ("Alliance") is a nonprofit membership association representing more than 350 child- and family-serving organizations across the U.S. and Canada. Alliance members serve more than 5 million individuals each year in more than 2000 communities. The Alliance mission is to strengthen members' capacity to serve and advocate for children, families and communities. Alliance members provide a vast array of services covering foster-family care, residential care, adoption and family preservation. The Alliance advocates on behalf of neglected and abused children and promotes policies that enhance child, family and community initiatives that make children safe and productive individuals.

Amici curiae CDF, Catholic Charities USA, CWLA, and Alliance believe that the Washington State Supreme Court decision before this Court could have a profound national impact upon the low income and special needs children for whom they advocate. While three of the organizations participating as *amici* have member agencies who sometimes serve as representative payees, and therefore may be impacted in that capacity by the Washington decision, the interest of *amici* in this case evolves more broadly from their long history of advocacy on behalf of children in the child

welfare system and a particular commitment to the needs of children with disabilities. *Amici* believe that the Washington Supreme Court's decision will deprive thousands of American children with disabilities in the public foster care system of key supports essential to their well-being and healthy development. Because *amici* devote significant efforts to nationwide advocacy on behalf of children with disabilities and others in need of special support, the challenges to *amici* in meeting the needs of these children will grow as a result of the Washington Supreme Court decision. *Amici* are filing this brief not only to address the legal issues associated with the Washington court's ruling, but to offer their unique insight into the policy implications that the decision may have on children nationally.

STATEMENT OF THE CASE

In the State of Washington, dependent children who have been abandoned, neglected or abused or who have no parent, guardian, or other custodian capable of adequately caring for them are placed in foster care under the care and custody of the Washington Department of Social and Health Services ("DSHS"). While placement of the child with a relative is the preferred option under Washington law (Wash. Rev. Code § 13.34.130(2)), DSHS will assume responsibility for a child's care when there is no suitable relative willing and/or able to provide appropriate nurturing and care. As of September 1999, there were 10,578 foster children in the care of DSHS. *See* Appendix to Petition for a Writ of Certiorari (hereinafter "App.") at 49, ¶ 3.

A number of the children receiving foster care in Washington are eligible for benefits from the Social Security Administration ("SSA"). At issue in this case are two types of benefits the children may receive under the Social Security Act: (1) Supplemental Security Income ("SSI") benefits under Title XVI of the Social Security Act, 42 U.S.C.

§§ 1381, *et seq.*, for children who are blind or disabled and who do not have sufficient income or resources to maintain a minimum standard of living; and (2) benefits for unmarried minor children who were dependent upon a wage earner entitled to retirement benefits under Title II of the Act and whose support has now been lost, due to the wage earner's death or disability. *See* 42 U.S.C. §§ 401, *et seq.* Of the 10,578 foster children in foster care in Washington in September 1999, approximately 923 children received SSI benefits under Title XVI, 469 children received Title II benefits, and 88 children received both. App. at 49, ¶¶ 6-7.

In general, where a Social Security beneficiary is under 18 years of age, the Commissioner of Social Security ("Commissioner") will appoint a representative payee to receive and administer Title II and/or SSI benefits on behalf of the child. 20 C.F.R. §§ 404.2010(b); 416.610(b). Under federal law, the Commissioner is authorized to designate a representative payee only where it would serve the "best interests" of the beneficiary. 42 U.S.C. §§ 405(j)(1)(A); 1383(a)(2)(A)(ii)(I). In the case of minor children, federal regulations provide that the appointment of a parent, step-parent, relative or close friend is preferred, but that—as a matter of last resort—the Commissioner may appoint an authorized social service agency. 20 C.F.R. §§ 404.2021(b); 416.621(b). For many children in Washington's foster care system, there is no parent, step-parent, relative or close friend that is suitable or willing to receive benefits on the child's behalf. Accordingly, in a number of instances, the Commissioner endeavored to appoint DSHS to serve as representative payee for foster care children eligible to receive SSI and Title II benefits.

Both prior to and after appointing an agency such as DSHS as representative payee, the Commissioner must comply with a number of federal statutes and regulations designed to ensure that the state agency will act in the best interests of the child. The Commissioner is required to conduct an

investigation of the agency. 42 U.S.C. §§ 405(j)(2)(A); 1383(a)(2)(B)(i). The Commissioner must also notify the beneficiary's legal guardian of the appointment and provide an opportunity for appeal of the appointment. 42 U.S.C. §§ 405(j)(2)(E)(ii); 1383(a)(2)(B)(xi)-(xiii).

Following the appointment of DSHS or a comparable state agency, the Commissioner is required to "establish a system of accountability" to insure that the benefits are properly used and can require a report from the payee on how the benefits are being used at any time. 42 U.S.C. §§ 405(j)(3)(B) and (D); 1383(a)(2)(C)(ii) and (iv). One component of this "system of accountability," at least as it applies in this case to DSHS, requires that the representative payee submit to the SSA a yearly accounting of benefits received, used and conserved for each child receiving benefits. App. at 67. The representative payee may use the benefits "only for the use and benefit of the beneficiary in a manner . . . in the best interests of the beneficiary." 20 C.F.R. §§ 404.2035; 416.635(a). Under federal regulations, the benefits are deemed to have been used for the beneficiary's benefit "if they are used for the beneficiary's current maintenance," which includes the "cost incurred in obtaining food, shelter, clothing, medical care, and personal comfort items," with any remaining amount conserved or invested. 20 C.F.R. §§ 404.2040(a)(1); 404.2045; 416.640(a); 416.645.

In order to ensure that the benefits are used for such current care expenses, the Social Security Act (the "Act") contains an anti-attachment provision aimed at preventing creditors from employing legal process (such as garnishment or attachment) to require representative payees to use the benefits to pay the past debts of the beneficiary. 42 U.S.C. § 407(a).[3] If the

[3] Notably, while the representative payee "may not be *required* to use benefit payments to satisfy a debt of the beneficiary," it is *permissible* for a payee to satisfy such a debt "if the current and reasonably foreseeable needs of the beneficiary are met." 20 C.F.R. 404.2040(d).

Commissioner determines during the ongoing review of the payee that the payee has misused benefits in any way—whether by improperly using them to pay past debts or for expenses otherwise not in the beneficiary's best interest—federal law requires that the Commissioner promptly terminate payment of benefits to the payee and certify payment to an alternative payee. 42 U.S.C §§ 405(j)(1)(A); 1383(a)(2)(A)(iii).

In this case, in accordance with the foregoing procedures, the Commissioner appointed DSHS to be the representative payee for the children in the Respondent class, all of whom receive (or received) foster care from the State of Washington and are (or were) eligible to receive SSI and/or Title II benefits. App. at 7-13. Following its appointment as representative payee, DSHS began receiving payments from the SSA on behalf of the minor beneficiaries in its care and used those funds to pay for the costs of current maintenance for the children. *Id.* Included among the costs of current maintenance were certain foster care expenses. In other words, DSHS would reimburse itself for foster care provided to beneficiaries from the Title II and SSI benefits those beneficiaries received, and place any remaining money in interest bearing accounts. *Id.* It is undisputed that all of those foster care expenses consist of costs for current maintenance and are spent on the beneficiaries. *Id.*

The Commissioner, pursuant to his ongoing review and oversight responsibilities, has repeatedly reviewed and approved DSHS's administration of Social Security benefits, including specifically DSHS's policy of applying SSI and Title II benefits to foster care expenses. In August 1998, the SSA conducted an audit of DSHS and found no defects in its performance as a representative payee. *See* Brief for the United States as Amicus Curiae in the Supreme Court of the United States at 7. To the contrary, the SSA determined that DSHS's administration of benefits was exemplary, conclud-

ing that DSHS "is a model agency that could stand as a prototype for effective organizational payeeship." App. at 78. In this very case, the United States filed two briefs in Washington state courts and one brief with this Court in which the Commissioner endorsed DSHS's performance as a representative payee and expressly approved DSHS's use of SSI and Title II benefits to defray the cost of current foster care.[4]

Despite the Commissioner's conclusion that DSHS, as representative payee, has operated within the bounds of the applicable federal statutes and regulations and in the best interests of the beneficiaries within its care, Respondents instituted the present suit in 1996 alleging that DSHS's administration of Social Security benefits violated federal law. In particular, Respondents alleged that DSHS's use of benefits to pay a portion of the costs of foster care for the beneficiaries—even though such funds are expended solely for the current maintenance of the beneficiaries—violates the anti-attachment provision of the Act, 42 U.S.C. § 407(a).

Following class certification on behalf of all past, present and future foster children in Washington who receive SSI or Title II benefits for whom DSHS acts or has sought to act as representative payee, the Okanogan County Superior Court entered summary judgment in favor of the Respondents. Petitioners appealed to the Washington Court of Appeals, which certified the case to the Washington Supreme Court. According to the five-justice majority of the Washington Supreme Court, the "critical question" before it was whether DSHS "acts as a creditor . . . when it reimburses itself for

[4] *See generally* Brief for the United States as Amicus Curiae in the Supreme Court of the United States; Brief for the Amicus Curiae Kenneth Apfel, Comm'r of the United States Soc. Sec. Admin., in the Supreme Court of the State of Washington ("Commissioner's Br."); Supplemental Brief for the Amicus Curiae Kenneth Apfel, Comm'r of the United States Soc. Sec. Admin, in the Supreme Court of the State of Washington.

foster care costs out of the foster children's benefits." App. at 19-20. Following two oral arguments and a remand to the trial court for additional fact-finding, the Court concluded that DSHS does act as a creditor in violation of the Social Security Act and therefore affirmed the trial court's decision. Petitioners timely filed a Petition for a Writ of Certiorari seeking review of that decision with this Court.

The question now presented by the Petition for a Writ of Certiorari ("Petition") is whether, under federal law, DSHS—in its role as representative payee for foster children eligible to receive SSI and Title II benefits—properly may use those benefits to pay for the current care and maintenance of the beneficiaries, including devoting a portion of the benefits to pay for foster care expenses for those children.

SUMMARY OF ARGUMENT

The Court should grant the writ of certiorari because the decision of the Washington Supreme Court creates an impermissible legal anomaly. Namely, one lone state court has interpreted federal statutory law to invalidate a practice in that state that: (1) is not only permitted, but endorsed by the federal agency charged with interpreting and implementing that law; and (2) is presumptively valid in the forty-nine remaining states. Thus, what is permitted under federal law in every other state is not permitted in the State of Washington. Such a result is untenable in our federal system. The practice addressed by the Washington Supreme Court's decision is either valid in every state or in none—it cannot be subject to piecemeal resolution on a case-by-case, state-by-state basis. Federal law cannot yield potentially inconsistent results based on application by individual jurisdictions. Moreover, the policy rationale upon which the Washington Supreme Court rests its decision fails adequately to consider a host of other, outweighing policy considerations of national scope and import that should guide the resolution of the

question presented by the Petition. Accordingly, the Court should grant the writ of certiorari to review and address the relevant federal and policy issues implicated by the Washington Supreme Court's decision.

ARGUMENT

I. THE PETITION SHOULD BE GRANTED BECAUSE THE STATE COURT DECISION ON A QUESTION OF FEDERAL LAW CONFLICTS WITH THE INTERPRETATION OF THE FEDERAL AGENCY CHARGED WITH IMPLEMENTING THE LAW.

The Washington Supreme Court concluded that a federal statute, implemented by the Commissioner of the Social Security Administration, prohibits DSHS from using beneficiaries' Social Security benefits to pay for a portion of the foster care DSHS provides to those beneficiaries. App. at 30-31. However, the Commissioner has expressly stated on multiple occasions *in this very case,* and otherwise, that a State acting as representative payee may offset the costs associated with the provision of foster care against the Title II and Title XVI social security benefits that a child in foster care receives. *See, e.g.*, Commissioner's Br. at 10-11. Thus, the Washington Supreme Court would effectively substitute its judgment for that of the Commissioner with respect to this issue of federal law, a result squarely at odds with the well-established principle, announced by this Court, that the Commissioner's construction of the Social Security Act and its corresponding regulations is entitled to substantial deference. *Auer v. Robbins*, 519 U.S. 452, 457-457 (1997) (quoting *Chevron U.S.A., Inc. v. Natural Resources Defense Counsel, Inc.*, 467 U.S. 837, 842-43 (1984)).

It is, of course, undisputed that SSA regulations expressly allow Social Security benefits to be used for the costs of a child's current maintenance, including food, shelter, clothing,

medical care, and personal comfort items. 20 C.F.R. 404.2040(a)(1), 406.460(a). It is likewise undisputed that the foster care expenses at issue here were spent on the beneficiaries and included precisely the same types of costs (*i.e.*, food, clothing, shelter, and other needs) that are expressly authorized by the governing federal regulations. App. at 11-13. Accordingly, following an audit of DSHS in August 1998, the Commissioner had no trouble concluding that "foster care is a type of current maintenance" (Commissioner's Br. at 10, 12, 15) and that DSHS's use of SSI and Title II funds to pay for foster care expenses fully complies with representative payee portions of the Act and the beneficiaries' best interests. *Id.* at 12, 15.

Because the Commissioner's interpretation (and, indeed, any reasonable interpretation of the statute) confirms that DSHS's actions are in compliance with the Social Security Act's representative payee provision and regulations, those same actions cannot then be construed simultaneously to violate the anti-attachment portion of the Act. The Act's provisions must be read together and as parts of a whole. *See United Food and Chemical Workers Union Local 751 v. Brown Group, Inc.*, 517 U.S. 544, 549-550 (1996). Pursuant to this bedrock principle of statutory construction, Section 407(a)'s prohibition on "creditors" using "legal process" to obtain benefits cannot outlaw actions condoned (if not required) by § 405(j)'s treatment of representative payees. "Section 407(a) was not intended to outlaw a procedure expressly authorized by the Social Security Administration's own regulations." *King v. Schafer*, 940 F.2d 1182, 1185 (8th Cir. 1991). To hold otherwise would render a portion of the Act meaningless. Accordingly, if DSHS's use of SSI and Title II benefits for current maintenance (such as foster care) complies with § 405(j) and the corresponding regulations (and it does), that same practice cannot then violate § 407(a). *Id.*; *Mason v. Sybinski*, 280 F.3d 788, 792-93 (7th Cir. 2002)

(a "representative payee's responsible management of a Social Security recipient's benefits cannot amount to 'other legal process'" in violation of § 407(a)).

Of course, whatever tension the Washington Supreme Court might have found to exist between § 407(a) and the representative payee portions of the Act is effectively moot, for § 407(a) cannot fairly be read to apply to DSHS's conduct in this case. Section 407(a) provides that future benefits payments are not "transferable or assignable" and are not subject to "execution, levy, attachment, garnishment, or other legal process." However, DSHS's use of benefits to pay for foster care expenses is neither an assignment of future payments, nor an execution, levy, attachment, garnishment or other legal process. Rather, it is the use of present funds to pay for current expenses and does not require DSHS to resort to garnishment, attachment or any such legal process. As such, § 407(a) has no application.

Moreover, the Washington Supreme Court's interpretation of the Act would have the illogical result of simultaneously *requiring* all non-agency representative payees to use SSI and Title II benefits to pay for the costs of a child's current care while *preventing* agency payees from using the benefits to pay for an entire category of current care (*i.e.*, foster care). Under the Washington Supreme Court's decision, DSHS—by virtue of its status as a state agency—finds itself far more restricted in how it may spend Social Security benefits on the beneficiaries' behalf than any other payee would be. This conclusion, as the Commissioner's interpretation acknowledges, is not only contrary to the governing statutes and regulations, but also contrary to logic. *See* Brief for the United States as Amicus Curiae in the Supreme Court of the United States at 18-19. There is no reason to treat a state agency acting as a representative payee differently (or, indeed, worse) than any other representative payee. When a representative payee uses Social Security benefits to pay for

current maintenance—whether that payee is a state agency or private individual—such conduct complies with governing federal law, as interpreted time and time again by the Commissioner.

Given the Commissioner's considered application of the governing federal law to the undisputed facts of this case, coupled with its specialized expertise on this topic, a state court should not substitute its judgment for that of the Commissioner. This Court should grant review to correct the state court's failure to afford due deference to the Commissioner's interpretation of the Act.

II. REVIEW SHOULD BE GRANTED TO RESOLVE THE CONFLICT CREATED BETWEEN THE STATES ON A QUESTION OF FEDERAL LAW.

The Washington Supreme Court's decision on this matter of federal law not only conflicts with the interpretation given by the responsible federal agency, it also creates an untenable anomaly in our federal system. The very same practice—borne entirely of federal law—is now valid in all states, save Washington. The scope and meaning of federal law cannot be subject to such selective, state-by-state application. This Court should grant certiorari in order to resolve this issue of a federal law on a uniform, national basis.

Pursuant to the Washington Supreme Court's decision, a state agency in Washington, acting as a representative payee for federal Social Security benefits, cannot use those benefits to pay for foster care expenses for the Social Security beneficiary. However, just to the north, a corresponding Alaskan state agency can apply those same federal benefits to defray the costs of foster care. *C.G.A. v. Alaska*, 824 P.2d 1364, 1369 n.14 (Alaska 1992) (holding that the state may act as representative payee and "could legitimately apply [the child's] benefits toward foster care"). Likewise, agencies

within the Seventh and Eighth Circuits may do the same. *See Mason*, 280 F.3d at 792 (holding that a representative payee's decision to apply benefits to the recipient's cost of care does not violate § 407(a) "even when the payee is the state itself"); *King*, 940 F.2d at 1185 (holding that Section 407(a) does not bar a State from using benefits to pay for maintenance of children under its care). In addition, as Petitioners note, the Washington Supreme Court decision appears to be in substantial tension with the caselaw of Kansas and Minnesota, as well. *See* Petition at 20-21 (citing *Mellies v. Mellies*, 815 P.2d 114 (Kan. 1991) and *In re the Guardianship of Nelson*, 547 N.W.2d 105 (Minn. Ct. App. 1996)). In fact, the SSA reports that "most states" currently use Title II and SSI benefits to offset the State's cost of providing foster care to children. *See* Brief for the United States as Amicus Curiae in the Supreme Court of the United States at 16.

Accordingly, the Washington Supreme Court's decision is in conflict with reported decisions from five jurisdictions and with the current practice in the majority of states. This conflict is not only untenable under principles of federalism, it also severely hampers the Commissioner's ability to administer a uniform nationwide Social Security program. Under these circumstances, the Court should grant review in order to resolve this issue of federal law, and thereby ensure uniform application of that law.

III. REVIEW SHOULD BE GRANTED BECAUSE THIS CASE RAISES ISSUES OF NATIONAL IMPORTANCE REGARDING THE AVAILABILITY AND USE OF SOCIAL SECURITY BENEFITS FOR NEEDY CHILDREN.

This case presents issues of profound national impact. Currently, there are more than one-half million abused and neglected children in foster care throughout the nation, of whom approximately one-quarter are disabled in some

manner and many of whom are eligible for SSI and Title II benefits. Over the years, a number of states have taken steps to help identify children with disabilities and, where appropriate, attempt to help these children qualify for SSI benefits. In Washington, DSHS has made special efforts to hire a specially-trained staff, whose sole job it is to review the foster care caseload for children with disabilities, assess their needs, and assist them in applying to the Social Security Administration for benefits. Washington also appeals preliminary denials of benefits to ensure that the children receive the benefits to which they are entitled. Were it not for this effort by the state agencies in Washington and elsewhere, the disabilities of many of these children might go unrecognized, and they would never be determined eligible for—or actually receive—benefits. The state agency's willingness to serve as representative payee is essential to these children receiving benefits. Because many of these children often have no relative, guardian or close friend who is suitable and willing to serve as a representative payee on their behalf, children depend on the state agency to perform that function. The rule announced by the Washington Supreme Court could severely affect whether and how the States decide to continue in these roles.

As the Commissioner observed, the Supreme Court of Washington's decision "hamstring[s] the Commissioner's ability to locate effective representative payees for minor children" by "eviscerat[ing] the important function" that state agencies play as representative payee. Commissioner's Br. at 8. What the Commissioner understands—and what the Washington Supreme Court failed adequately to consider—is that an agency like DSHS only acts as representative payee when there is *no one else to act in that capacity*, a result ensured by SSA regulations listing the state agencies last in the order of preference in selecting a representative payee. 20 C.F.R. § 404.2021(b).

Given the fiscal pressures on state governments, Washington likely will not be able to continue the investment of staff and resources to identify children with disabilities and seek out Social Security benefits on their behalf if the Washington Supreme Court decision is allowed to stand. The state's ability to make the necessary investments to represent the child's interest to the SSA and act as a representative payee for children will be severely impaired unless it can offset the costs involved in seeking and monitoring benefits for these children.

Precluding states from offsetting foster care expenses with Social Security benefits will inevitably produce a host of unfortunate results. First, if agencies like DSHS are unable to serve as representative payee (either at all or to the same extent that they have done in the past), many children in foster care who are eligible for Social Security benefits and who heretofore have had no one but such agencies (the SSA's last choice) to act as their representative payee *will not receive* their benefits. In fact, it is very likely that the severity of their disabilities and potential for receiving benefits will not even be recognized. Second, while a reduction in DSHS's role as representative payee does not mean that Washington's children will go without foster care, it does mean that, without the offset, there will be fewer resources for *all* of the children in foster care in Washington. This serves only to harm those children who already have too little.

Accordingly, in addition to the loss of benefits, children who are eligible for SSI benefits would also be disadvantaged in other ways. For example, many of these children would not get the special attention that is now directed to their disabilities. The SSI application process requires a thorough assessment of the applicants' disabilities and how those disabilities impact their daily functioning. This assessment is especially important in determining the children's individual

service needs. Some of the children also receive extra benefits and services that are not normally available in foster care, such as special therapy and rehabilitation, and sometimes housing modifications. They may also receive a special trust account to help pay for additional services and supports.

The receipt of these benefits not only helps ensure a minimum standard of care for the beneficiaries, but also helps children continue to receive the services and supports they need when they are ready to leave foster care. For example, a child's eligibility for SSI, and consequently also for Medicaid, may make it easier for that child to reunite safely with his or her family, which may be overwhelmed by the financial responsibility of caring for a child with special needs. In the State of Washington in 2000, 119 children in foster care with SSI benefits were reunited with their families. In instances where the child who returns home continues to be financially eligible for SSI, the benefits help the parent adequately meet the child's special needs. Receipt of benefits may also help to facilitate adoptions for children, when returning home is not appropriate or safe, since children eligible for SSI are automatically eligible for federal Title IV-E Adoption Assistance payments. These payments help to ease the financial challenges faced by prospective adoptive parents who wish to adopt a child with special needs, and also automatically trigger the child's eligibility for Medicaid assistance. In the year 2000, 72 children with Title XVI benefits were adopted in Washington.

The receipt of SSI benefits also assists those young people who age out of foster care at age 18 or older, but who as adults with disabilities still need continuing assistance from the Social Security system. The fact that a young adult received SSI as a child in foster care can often ease the way for help from the adult system. In addition, children who

receive Title II and SSI may exit care with at least some savings in a trust fund to help them as they struggle to make it on their own for the first time.

Because the State is—by federal law—the last line of defense for children in foster care who are eligible for Social Security benefits, if the State is precluded or discouraged from acting as the representative payee for those children, it is likely that no one will. These children therefore face the possibility of losing a lifetime's worth of benefits if the State cannot assume the role of representative payee. Because the Washington Supreme Court's interpretation of the Social Security Act and regulations discourages state agencies from serving as representative payees, this decision likely will have a profound adverse impact on the very children the Act is designed to protect.

CONCLUSION

For the foregoing reasons the petition for a writ of certiorari should be granted.

Respectfully submitted,

MICHAEL L. MARTINEZ *
DAVID L. HAGA
BRIDGET K. ALLISON
CROWELL & MORING LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 624-2500

Attorneys for Children's Defense Fund, Catholic Charities USA, Child Welfare League of America, and Alliance for Children and Families

* Counsel of Record

April 25, 2002

(5)

No. 01-1420

Supreme Court, U.S.
FILED
APR 25 2002
OFFICE OF THE CLERK

In the
SUPREME COURT OF THE UNITED STATES

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, ET AL.,

Petitioners,

v.

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, GUARDIAN, AND OTHERS SIMILARLY SITUATED,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

BRIEF OF THE STATES OF FLORIDA, ALASKA, COLORADO, DELAWARE, KANSAS, LOUISIANA, MASSACHUSETTS, MICHIGAN, MINNESOTA, MISSISSIPPI, MISSOURI, NEBRASKA, NEVADA, NEW HAMPSHIRE, NEW JERSEY, NEW MEXICO, NEW YORK, NORTH CAROLINA, OHIO, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, UTAH, VERMONT, WEST VIRGINIA, AND WYOMING AND THE COMMONWEALTH OF PUERTO RICO AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

ROBERT A. BUTTERWORTH
Attorney General of Florida
THOMAS E. WARNER
Solicitor General of Florida
Counsel of Record
MATTHEW J. CONIGLIARO
Deputy Solicitor General
Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399-1050
(850) 414-3681

(Additional Counsel Listed Within)

20 pp

BRUCE M. BOTELHO
Attorney General of Alaska
P.O. Box 110300
Juneau, AK 99811

KEN SALAZAR
Attorney General of Colorado
1525 Sherman Street
Denver, CO 80203

M. JANE BRADY
Attorney General of Delaware
820 French Street
Wilmington, DE 19801

CARLA J. STOVALL
Attorney General of Kansas
120 S.W. 10th Avenue
Topeka, KS 66612

RICHARD P. IEYOUB
Attorney General of Louisiana
300 Capitol Drive
Baton Rouge, LA 70802

TOM REILLY
Attorney General of
Massachusetts
One Ashburton Place
Boston, MA 02108

JENNIFER M. GRANHOLM
Attorney General of Michigan
P.O. Box 30212
Lansing, MI 48909

MIKE HATCH
Attorney General of Minnesota
102 State Capitol
75 Constitution Ave
St. Paul, MN 55155

MIKE MOORE
Attorney General of Mississippi
P.O. Box 220
Jackson, MS 39205

JEREMIAH W. (JAY) NIXON
Attorney General of Missouri
207 West High Street
Jefferson City, MO 65101

DON STENBERG
Attorney General of Nebraska
2115 State Capitol
Lincoln, NE 68509

FRANKIE SUE DEL PAPA
Attorney General of Nevada
100 N. Carson Street
Carson City, NV 89701

PHILIP T. MCLAUGHLIN
Attorney General of
New Hampshire
33 Capitol Street
Concord, NH 03301

DAVID SAMSON
Attorney General of New Jersey
25 Market Street
Trenton, NJ 08625

PATRICIA A. MADRID
Attorney General of
New Mexico
P.O. Drawer 1508
Sante Fe, NM 87504

ELIOT SPITZER
Attorney General of New York
The Capitol
Albany, New York 12224

ROY COOPER
Attorney General of
North Carolina
P.O. Box 629
Raleigh, NC 27602

BETTY D. MONTGOMERY
Attorney General of Ohio
30 E. Broad Street, 17th Floor
Columbus, OH 43215

ANABELLE RODRÍGUEZ
Attorney General of
Puerto Rico
P.O. Box 9020192
San Juan, PR 00902

CHARLES M. CONDON
Attorney General of
South Carolina
P.O. Box 11549
Columbia, SC 29211

MARK BARNETT
Attorney General of South Dakota
500 East Capitol Avenue
Pierre, SD 57501

PAUL G. SUMMERS
Attorney General of Tennessee
425 Fifth Avenue North
Nashville, TN 37243

MARK L. SHURTLEFF
Attorney General of Utah
236 State Capitol
Salt Lake City, UT 84114

WILLIAM H. SORRELL
Attorney General of Vermont
109 State Street
Montpelier, VT 05609

DARRELL V. MCGRAW, JR.
Attorney General of West Virginia
State Capitol, Room 26-E
Charleston, WV 25305

HOKE MACMILLAN
Attorney General of Wyoming
123 State Capitol
Cheyenne, WY 82002

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTEREST OF THE *AMICI* 1

REASONS TO GRANT THE PETITION 2

I. *KEFFELER* HAS CREATED SUBSTANTIAL AND SIGNIFICANT UNCERTAINTY REGARDING CONTROLLING FEDERAL LAW BY INVALIDATING A PRACTICE LONG FOLLOWED BY THE STATES. 2

A. STATES ROUTINELY SERVE AS REPRESENTATIVE PAYEES FOR FOSTER CARE CHILDREN AND USE PORTIONS OF THE FUNDS FOR THE CHILDREN'S CURRENT CARE. 2

B. IGNORING *KEFFELER* COULD LEAVE THE STATES IN A POSITION OF ECONOMIC PERIL, WHILE COMPLYING WITH *KEFFELER* COULD HARM FOSTER CHILDREN, STATES, AND THE SOCIAL SECURITY PROGRAM 7

II. *KEFFELER* CONFLICTS WITH REGULATIONS ADOPTED BY, AND STATUTORY INTERPRETATIONS MADE BY, THE SOCIAL SECURITY ADMINISTRATION. 9

III. *KEFFELER* CONFLICTS WITH DECISIONS OF THE UNITED STATES CIRCUIT COURTS OF APPEALS AND STATE COURTS. 11

CONCLUSION 14

TABLE OF AUTHORITIES

CASES

Auer v. Robbins, 519 U.S. 452 (1997) 10

C.G.A. v. State of Alaska, 824 P.2d 1364 (Alaska 1992) .. 12

Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984) 10

Ecolono v. Division of Reimbursements of the Department of Health and Mental Hygiene, 769 A.2d 296 (Md. Ct. App. 2001) 12

Guardianship Estate of Keffeler v. State of Washington Department of Social and Health Services, 32 P.3d 267 (Wash. 2001) ..... passim

King v. Schafer, 940 F.2d 1182 (8th Cir. 1991), *cert. denied sub nom. Crytes v. Schafer*, 502 U.S. 1095 (1992) 11-12

Mason v. Sybinski, 280 F.3d 788 (7th Cir. 2002) 12

Muller v. State of New York, 686 N.Y.S. 2d 652 (N.Y. Ct. Cl. 1999), *affirmed without opinion*, 719 N.Y.S.2d 916 (N.Y. App. Div. 2001) 13

STATUTES

Title II of the Social Security Act (42 U.S.C. § 401 *et seq.*) 3

42 U.S.C. § 405(j) 4

42 U.S.C. § 405(j)(3)(B) 6

42 U.S.C. § 407(a) 7, 10-11, 13

42 U.S.C. § 408(a)(5) 9

Title XVI of the Social Security Act (42 U.S.C. § 1381 *et seq.*) 3

42 U.S.C. § 1383(a) 4

42 U.S.C. § 1383(a)(2)(B) 4

42 U.S.C. § 1383(a)(2)(C)(ii) 6

42 U.S.C. § 1383(d)(1) 7

Fla. Stat. § 402.33 (2001) 3

REGULATIONS

20 C.F.R. § 404.2021 4

20 C.F.R. § 404.2035(a) 6, 10

20 C.F.R. § 404.2040(a)(1) 6, 10

20 C.F.R. § 416.1205(c) 5

20 C.F.R. § 416.610(b) 4

20 C.F.R. § 416.621 4

20 C.F.R. § 416.635(a) 6, 10

20 C.F.R. § 416.640(a) 6, 10

INTEREST OF THE *AMICI*

The *amici* are States, along with the Commonwealth of Puerto Rico (the "*amici* States"), that care for abused, neglected and abandoned children through a system of foster care. Where foster children qualify for federal assistance under the Social Security Act, the *amici* States often serve as representative payees, and like any parent who receives social security funds on behalf of a child, the *amici* States use portions of those federal funds to meet the costs of the children's current care.

The use of foster care children's social security funds to pay for current care is consistent with, if not required by, federal statutes and regulations. This nationwide practice has proceeded for decades with the knowledge and approval of the Social Security Administration. Nonetheless, the court in *Guardianship Estate of Keffeler v. State of Washington Department of Social and Health Services*, 32 P.3d 267 (Wash. 2001), declared the practice to be contrary to federal law and ordered a Washington state agency to repay current and former foster children 19 years' worth of supposedly misused funds.

In the wake of *Keffeler*, the States are left to anticipate similar litigation – litigation that in the aggregate could seek *billions* of dollars in damages. The States are also uncertain about their conduct going forward. Compliance with federal law as interpreted by *Keffeler* would require dismantling large components of States' children's services programs, to the detriment of the children, the States, and even the social security program if *Keffeler* were later held to be in error. Yet, with the support of the Social Security Administration, the States firmly believe that *Keffeler*'s conclusion is incorrect, that the nationwide practice at issue is not contrary to federal law and should be continued, and that the States should have no liability whatsoever in these matters.

This brief will detail this situation. Ultimately, the *amici* States urge this Court to grant the requested writ and clarify the controlling federal law in this very significant area.

REASONS TO GRANT THE PETITION

I. *KEFFELER* HAS CREATED SUBSTANTIAL AND SIGNIFICANT UNCERTAINTY REGARDING CONTROLLING FEDERAL LAW BY INVALIDATING A PRACTICE LONG FOLLOWED BY THE STATES.

The Supreme Court of Washington rested its decision in *Keffeler* squarely upon federal law. That law is, of course, applicable to every State, and if Washington has violated federal law by using foster children's social security funds to pay for current care costs, then all States may be subject to similar claims for damages and injunctive relief, as the *amici* believe that *every State* follows the same practice. *Keffeler* has thus resulted in substantial and significant uncertainty regarding controlling federal law, and the decision places the States in the precarious position of not knowing how to structure their foster care programs. These problems merit the immediate consideration of the question now before the Court.

A. STATES ROUTINELY SERVE AS REPRESENTATIVE PAYEES FOR FOSTER CARE CHILDREN AND USE PORTIONS OF THE FUNDS FOR THE CHILDREN'S CURRENT CARE.

Unfortunately, our nation's prosperity and successes cannot ensure that every child's home will provide the loving, safe and nurturing environment that children require to grow and mature. Abuse, neglect and abandonment are the chief reasons that children are placed in a state's custody, and, once there, the state must attempt to meet each child's physical, emotional and developmental needs. Foster care is a term generally used to refer to the system used by states to place children in homes other than their natural or adoptive parents' homes, where foster parents or other caregivers attempt to provide a nurturing, albeit substitute, home environment.

Foster care is, by design, a temporary arrangement. Wherever possible, states aim to reunify children with their legal parents. When that cannot be accomplished, states seek to place children with new parents through permanent adoption. Foster parents offer their homes and services to children in need of care until one of these long-term goals can be met.

Particular foster care placements may last weeks, months, or, in some instances, years. Over time, a foster child may reside with numerous foster parents.

As a means to encourage adults to participate in foster care programs, states attempt to minimize the expenses that foster care parents must bear. States often look first to a child's natural parents to account for the child's foster care costs,[1] but in many instances, if not most, no parent is both available and able to pay those costs. Consequently, states generally take it upon themselves to finance the sizeable costs associated with the foster care system, utilizing any available federal assistance.

On occasion, foster children are able to contribute to the costs of their own care through their social security benefits. Many children qualify for one of two forms of federal benefits offered through the Social Security Act (the Act). First, a child under 18 may receive benefits under Title II of the Act, which provides workers with retirement, death, and disability insurance (RSDI benefits), if the child's parent is eligible to receive RSDI benefits or if the child is a surviving dependent of a deceased parent who was eligible for those benefits. 42 U.S.C. § 401 *et seq.* Second, a child who is disabled and meets certain income and resource limitations may receive benefits under Title XVI of the Act (SSI benefits). 42 U.S.C. § 1381 *et seq.* The fact that a child is in foster care is not directly relevant to the child's entitlement to RSDI or SSI benefits.

---

[1] *See, e.g.*, Fla. Stat. § 402.33 (2001) (enabling state to assess foster care costs to natural parent or guardian).

When the Commissioner of Social Security determines that a recipient may be best served by payment of his or her social security benefits to a representative payee, the Commissioner may appoint such a person. 42 U.S.C. §§ 405(j), 1383(a). SSA regulations promulgated by the Commissioner generally require that a representative payee be appointed whenever a recipient is under the age of 18. 20 C.F.R. § 416.610(b). The Commissioner thus has some assurance that a responsible person will be accountable for the funds and expend them in accordance with statutory and regulatory guidelines.

Not surprisingly, foster care children generally lack an adult in their lives who can adequately serve as a representative payee. Whatever circumstances caused a child to be removed from his or her parents or guardians in the first place will likely make those persons unsuitable or unavailable to serve as a representative payee. Also, the potentially transitory nature of foster care placements makes foster care parents a poor choice – particularly when considering the lengthy procedures that must be followed before a beneficiary is determined eligible for benefits or an initial or new representative payee is approved.

Routinely, then, where a child in foster care would be eligible to receive social security benefits, the agency that administers the state's foster care program not only completes the child's application for benefits but applies to be the child's representative payee as well. For decades, the Commissioner has made such appointments, and, as a result, state agencies have been the representative payees for tens of thousands of foster children. *See* 42 U.S.C. § 405(j); 42 U.S.C. § 1383(a)(2)(B); 20 C.F.R. §§ 404.2021, 416.621 (permitting institutions to serve as representative payees).

The following chart provides general estimates of the number of children in certain States' foster care programs, along with the number of those children for whom those States serve as representative payee for social security benefits, based upon information provided by the respective States:

State	Foster Care Children	State As Rep. Payee
Florida	24000	3894
Michigan	14098	1048
New Jersey	10812	280
Washington	10578	1411
Massachusetts	10538	1350
Tennessee	9801	854
Minnesota	8362	1208
Arizona	6000	198
South Carolina	4968	500
Alaska	2337	228
Hawaii	2000	200

This arrangement is both logical and appropriate in several respects. For example, foster care children are generally considered a state's ward, and the state – not a foster parent – is deemed to be the child's legal custodian. The state's service as representative payee is thus comparable to a natural parent's service on behalf of his or her custodial child. Also, unlike nearly every other person in the typical foster child's life, the state has a constant presence, making it a stable representative payee.

Furthermore, as a prospective or appointed representative payee, States supply valuable administrative resources. State foster care programs help to determine whether a child should apply for social security benefits in the first instance, to complete the many steps involved in applying for and securing benefits, to see that only appropriate uses are made of the funds, to account to the SSA for the use of the funds, and, in the case of SSI benefits, to monitor the child's resources to ensure that the child's eligibility is preserved. *See* 20 C.F.R. § 416.1205(c) (imposing $2000 maximum on certain non-exempt resources).

Representative payees are required to expend beneficiaries' social security funds in accordance with federal statutes and the SSA's regulations. By regulation, a representative payee may use social security funds "only for the

use of the beneficiary in a manner and for the purposes he or she determines . . . to be in the best interests of the beneficiary." 20 C.F.R. §§ 404.2035(a), 416.635(a). Benefits are deemed to be used for the use and benefit of the beneficiary "if they are used for the beneficiary's current maintenance," and "current maintenance" is defined by the SSA to include "cost incurred in obtaining food, shelter, clothing, medical care, and personal comfort items." 20 C.F.R. §§ 404.2040(a)(1), 416.640(a).

Based on these principles, states have long served as the representative payees of foster care children and, in the course of expending social security benefits "in the best interests of the beneficiary," used portions of those benefits to pay costs associated with the children's foster care: shelter, food, clothing, etc. States have done so in the good faith belief that, like any parent who receives social security benefits as the representative payee for a child, controlling federal law permits – if not requires – portions of those funds to be directed towards the children's current care.

Significantly, the *amici* States believe that *every State* follows this practice in some fashion. Furthermore, while the Commissioner is required to implement and has implemented monitoring procedures to oversee how institutional representative payees spend their beneficiaries' benefits, *see* 42 U.S.C. §§ 405(j)(3)(B), 1383(a)(2)(C)(ii), the *amici* States are aware of no SSA review of any state foster care program that has ever questioned this routine expenditure of benefits. To the contrary, the SSA's positive reviews of the States' spending practices have long given every indication that these expenditures are both lawful and appropriate. The States have relied on such indications, and on the plain meaning of the governing law, in conducting themselves to this point. As we show in the next section, the *Keffeler* decision has created substantial uncertainty regarding how the States should now proceed.

B. IGNORING *KEFFELER* COULD LEAVE THE STATES IN A POSITION OF ECONOMIC PERIL, WHILE COMPLYING WITH *KEFFELER* COULD HARM FOSTER CHILDREN, STATES, AND THE SOCIAL SECURITY PROGRAM.

According to *Keffeler*, where a state has committed itself to expend monies on the care of foster children, and where that state serves as the representative payee for foster children who receive social security benefits, the state may not expend those benefits on the children's foster care expenses. In the Supreme Court of Washington's view, the state is simply a creditor seeking reimbursement for credit extended to the children, and the expenditure constitutes a form of "other legal process" aimed at recouping the credited monies, in violation of the anti-attachment provision found at 42 U.S.C. § 407(a).[2] *Keffeler* ignored the conflict between that interpretation and the SSA's regulations that expressly permit benefits to be used for a beneficiary's current care, and the decision's holding casts a cloud of confusion over an area of federal law that should be governed by a single, national standard.

If *Keffeler* is correct, then the *amici* States, and, indeed, every State, would violate federal law each time a foster child's

---

[2] 42 U.S.C. § 407(a) provides:

> The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

Also, 42 U.S.C. § 1383(d)(1) makes this provision applicable to SSI benefits.

social security funds are used to pay a portion of the child's care costs. A prudent desire to comply with federal law might suggest that States immediately alter that practice, if *Keffeler* is believed correct, but this matter involves significant considerations that preclude a simple solution, and the *amici* States do not believe that *Keffeler* is correct.

Also, if *Keffeler* is an accurate statement of federal law, then the States may be subject to claims by foster children for the supposed misuse of their social security benefits – a potential liability that can by no means be considered insignificant. For example, during its 2000-2001 fiscal year, the State of Florida received approximately $12.7 million in social security payments for foster children for whom the State served as representative payee. Of that $12.7 million, approximately $8.4 million were used on behalf of the intended beneficiaries to pay for foster care expenses such as room and board. Considering that the plaintiff class in *Keffeler* seeks damages for supposedly misused benefits over a 19-year period, it is manifest that the damages exposure for states such as Florida could reach hundreds of millions of dollars. This exposure will increase with each month that the supposedly unlawful conduct continues.

At the same time, compliance with *Keffeler* at this point – without any confirmation from this Court that the case correctly interprets the controlling federal law – could create significant hardships upon foster care children, the States, and the SSA, all of which would be unnecessary if the decision is determined at some later point to be in error. Absent the ability to utilize foster children's social security benefits to help pay for the care that states provide, states may find it difficult, on a financial level, to justify undertaking the massive, costly efforts required to serve as representative payees. If states do not serve as representative payees, the SSA and eligible children may be put to considerable trouble to attempt to locate suitable alternative payees, and the administrative, accounting and auditing advantages gained by using institutional representative payees would, in all likelihood, be lost. In addition, dismantling the administrative departments

that currently support the States' efforts as representative payees would be a costly and wasteful endeavor if subsequent litigation determined that *Keffeler* was incorrectly decided and those experienced departments needed to be reconstituted. In all events, the States would lose the benefit of millions of dollars in federal funds that are intended to be spent on their recipients' care.

Finally, it bears emphasis that the knowing misuse of social security benefits by a representative payee is a felony. 42 U.S.C. § 408(a)(5). The States have never intended and do not intend to violate the law by administering foster children's social security benefits consistent with the SSA's regulations.

For all of these reasons, *Keffeler* leaves the States in a difficult position, and only this Court's guidance regarding the federal law at issue can resolve the substantial and significant uncertainty that the case creates. The requested writ of certiorari should be granted.

II. *KEFFELER* CONFLICTS WITH REGULATIONS ADOPTED BY, AND STATUTORY INTERPRETATIONS MADE BY, THE SOCIAL SECURITY ADMINISTRATION.

The *amici* States firmly believe that *Keffeler* was wrongly decided. In support of this position, the *amici* States rely on the regulations adopted by, and the statutory interpretations made by, the SSA, which is the agency charged with the Act's administration. The conflict between the Commissioner's views and the *Keffeler* decision – in an area that calls for national uniformity – presents another important reason that the Court should grant the requested writ of certiorari in this case.

As previously discussed, the SSA's regulations expressly permit representative payees to utilize a beneficiary's social security benefits in the manner that the payee determines is in the beneficiary's best interests, and benefits used for the beneficiary's current maintenance are expressly considered to be

used for the beneficiary's use and benefit. 20 C.F.R. §§ 404.2035(a), 404.2040(a)(1), 416.635(a), 416.640(a). The Supreme Court of Washington disagreed, concluding that a state agency's decision to use foster children's benefits for their current maintenance constitutes "other legal process" that reimburses a creditor, in violation of 42 U.S.C. § 407(a).

The effect of *Keffeler* is to create an exception to the SSA regulations that precludes expenditures on current maintenance, at least where the representative payee would otherwise be obliged to satisfy the expense. There is no principled reason why this exception would not apply to parents who are obligated to care for their children just as well as it would apply to state agencies that are obligated to care for their wards.

This exception is not only unworkable, it is contrary to the SSA's interpretation of its regulations and the statutes it administers. As discussed above, the SSA has overseen the States' service as representative payees for foster children for decades and, to the *amici* States' knowledge, has always approved – and never contested – the use of benefits for the children's care. Furthermore, the Commissioner filed two briefs in the *Keffeler* litigation in support of Washington's practice, Petition at 13, and, in its decision, the Supreme Court of Washington not only neglected to confront the Commissioner's views, it declined even to acknowledge them.

This Court has clearly held that, where Congress has not directly spoken to the precise question at issue, an approach taken by the agency charged with administering a statutory scheme will be sustained so long as it is "based on a permissible construction of the statute." *Auer v. Robbins*, 519 U.S. 452, 457 (1997); *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984). Further, the Commissioner's interpretation of her own regulations – even where expressed through an *amicus* brief – is controlling unless "plainly erroneous or inconsistent with the regulation." *Auer*, 419 U.S. at 461 (quotation omitted).

In refusing to acknowledge the Commissioner's views on whether the state action in question violates the anti-attachment restriction found in section 407(a) or is permitted because of the state's representative payee status, the Supreme Court of Washington failed to consider the deference that this Court's precedent requires those views be given. As a result, the national uniformity that should exist in this area has been broken, and, to its detriment, Washington has been left outside the system currently followed by the remainder of the States – States that continue to rely on the Commissioner's position. To restore the uniformity needed in this area, and to resolve the conflict between the Commissioner's views and the *Keffeler* decision, this Court should grant the requested writ of certiorari.

III. *KEFFELER* CONFLICTS WITH DECISIONS OF THE UNITED STATES CIRCUIT COURTS OF APPEALS AND STATE COURTS.

The final reason that the Court should grant a writ of certiorari in this case is that *Keffeler* conflicts with decisions of the United States circuit courts of appeals and state courts, decisions upon which States have relied and, in good faith, will continue to rely. Only this Court can resolve this conflict.

In *King v. Schafer*, 940 F.2d 1182 (8th Cir. 1991), *cert. denied sub nom. Crytes v. Schafer*, 502 U.S. 1095 (1992), a group of RSDI recipients sued the director of Missouri's department of mental health. They argued that the state violated 42 U.S.C. § 407(a) when its mental health institutions were appointed as the plaintiffs' representative payees and when, as representative payees, the institutions decided to use portions of the plaintiffs' benefits to pay for their current maintenance. The Eighth Circuit flatly rejected both contentions and held that the state had not used "other legal process" to reach the plaintiffs' benefits. According to the Eighth Circuit, section 407(a) was not intended to outlaw a procedure expressly authorized by the SSA's own regulations. *Id.* at 1185-86.

Soon after *King*, the Supreme Court of Alaska confronted a similar argument. In *C.G.A. v. State of Alaska*, 824 P.2d 1364 (Alaska 1992), a minor appealed an Alaska court's decision that the State of Alaska could, as a minor's representative payee, use the minor's social security funds to pay for the minor's care in a state institution. The minor argued that section 407(a) precluded the state from "seiz[ing] his benefits" in a manner contrary to his wishes. The state supreme court disagreed. Noting the absence of attachment proceedings, the court held that the SSA's regulations permitted the state to serve as representative payee and to use some or all of the minor's benefits to pay for his institutional care. *Id.* at 1369.

Most recently, the Seventh Circuit reached the same result. In *Mason v. Sybinski*, 280 F.3d 788 (7th Cir. 2002), state hospital patients sued the hospital, which had been appointed their representative payee, and argued that because the hospital was obligated to provide them with care without respect to their ability to pay, section 407(a) precluded the hospital from using the patients' social security benefits to pay for that care. Observing that the expenditures were consistent with the SSA's regulations and the hospital's status as representative payee, the Seventh Circuit rejected the patients' argument and held that no "other legal process" was being used in violation of section 407(a). *Id.* at 793-94.

Finally, a Maryland appellate court recently held that no violation of section 407(a) occurred when a committed mental health patient's social security benefits were used to pay a state agency for the patient's current care and maintenance. *Ecolono v. Division of Reimbursements of the Department of Health and Mental Hygiene*, 769 A.2d 296 (Md. Ct. App. 2001). The agency's director was the patient's representative payee, and the court concluded that the use of benefits by the payee did not involve "other legal process" as contemplated by the anti-attachment provision.

The important question presented by this case is thus ripe for this Court's review. *Keffeler* was by no means the first

decision to consider whether a representative payee may utilize social security benefits to pay for current care that the payee provides the beneficiary. *Keffeler* was, however, the first decision to declare squarely that such use by a representative payee constitutes a misuse of benefits and a violation of 42 U.S.C. § 407(a). The *amici* States strongly disagree with *Keffeler* and have long relied on the rationale offered by the contrary line of authorities. To resolve this clear and significant conflict in the case law, the *amici* States urge the Court to review the decision in *Keffeler*.[3]

---

[3] A New York decision – *Muller v. State of New York*, 686 N.Y.S. 2d 652 (N.Y. Ct. Cl. 1999), *affirmed without opinion*, 719 N.Y.S.2d 916 (N.Y. App. Div. 2001) – appears to conclude that the director of a mental health center violated § 407(a) by paying the state portions of a beneficiary's social security benefits, where the director had been appointed the beneficiary's representative payee. The case, however, principally concerned past maintenance costs, and the decision did not distinguish between expenditures for past and current maintenance. Moreover, the case turned largely upon an independent question of state law, which arguably reduces the case's unclear and perhaps erroneous federal law pronouncements to dicta.

CONCLUSION

For each of the foregoing reasons, this Court should grant the writ of certiorari requested in this case by the Washington State Department of Health and Social Services.

Respectfully submitted,

ROBERT A. BUTTERWORTH
Attorney General of Florida

THOMAS E. WARNER
Solicitor General of Florida
Counsel of Record

MATTHEW J. CONIGLIARO
Deputy Solicitor General

Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399-1050
(850) 414-3681

(16)

No. 01-1420

IN THE SUPREME COURT OF THE UNITED STATES

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, ET AL.,

Petitioners,

v.

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, GUARDIAN, AND OTHER PERSONS SIMILARLY SITUATED,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

JOINT APPENDIX – VOL. I OF II

CHRISTINE O. GREGOIRE
Attorney General

William Berggren Collins
Sr. Assistant Attorney General
Counsel of Record
1125 Washington Street SE
Olympia, WA 98504-0100
360-753-6245
Counsel for Petitioners

Teresa Wynn Roseborough
Counsel of Record
Sutherland Asbill & Brennan LLP
999 Peachtree Street NE
Atlanta, GA 30309-8000
404-853-8000
Counsel For Respondents

PETITION FOR WRIT OF CERTIORARI FILED MARCH 14, 2002
CERTIORARI GRANTED MAY 28, 2002

319pp

TABLE OF JOINT APPENDIX

Page

Relevant Docket Entries....1

Order of the Supreme Court of the United States Granting Stay dated March 13, 2002 8

Class Action Complaint For Disgorgement Of Funds Wrongfully Collected And For Injunctive Relief....9

Answer 23

Amended Answer Of Department Of Social And Health Services 25

Declaration Of Fact In Support Of Plaintiff's Motion For Summary Judgment 27

Exhibit 1....37

Exhibit 7....39

Exhibit 9....43

Exhibit 12....47

Exhibit 15....50

Exhibit 20....56

Exhibit 21....65

Exhibit 24....77

Exhibit 26....86

Affidavit Of Richard J. Anderson (3/5/97)....94
Affidavit Of Richard J. Anderson (7/24/97)....98
Affidavit Of Richard J. Anderson (9/17/97)....102
First Amended Complaint....105
Affidavit Of Linda Gil....123
Affidavit Of Alan Rhoten....129
Affidavit Of Karen Kegley Justinen....135
Exhibit A....145
Exhibit B....149
Exhibit C....160
Exhibit D....161
Affidavit Of Tamara Erickson....189
Affidavit Of Robert Covington....207
50 Random Accounts
Blimka....215
Cotton....228
Filbeck....235
Smith....314
Tulowezke....323

Exhibit 1 (Re ponse To Order To Produce 2)....392
Blimka....392
Cotton....395
Tulowezke....398
Smith....400
Exhibit 1 (Response To Order To Produce No. 9) re Document Production No. 9 T List Service Code Data....403
Dillon et al. v. State, Argument Of Counsel And Court's Ruling....472
Plaintiffs' Brief In Support Of Proposed Findings Re: Federal Benefits....509
Braam et al. v. State Injunction....548

The following opinions, decisions, judgments, and orders have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the printed Petition For Certiorari:

Order of the Supreme Court of Washington dated October 11, 2001 1

Order of the Supreme Court of Washington Denying Motion For Reconsideration dated Dec. 14, 2001 40

Order of the Washington Supreme Court on Remand dated Dec. 2, 1999 43

Court's Findings Of Fact On Order Of Remand From Supreme Court dated May 30, 2000 46

Okanogan County Superior Court Order Granting Plaintiff's Motion For Summary Judgment dated Jan. 15, 1999 112

Okanogan County Superior Court Memorandum Opinion dated Sept. 29, 1998 122

Okanogan County Superior Court Order Allowing Amendment Of Complaint dated Nov. 7, 1997 131

Okanogan County Superior Court Order Granting Amendment Of Order Certifying Class Action dated Nov. 7, 1997 133

Okanogan County Superior Court Order Certifying Case To Proceed As A Class Action, Defining The Class And Denying Defendants' Motion To Dismiss dated May 19, 1997 136

Order of Sandra Day O'Connor, Associate Justice of the Supreme Court of the United States, Granting Stay dated Jan. 29, 2002 142

This page intentionally left blank.

RELEVANT DOCKET ENTRIES

April 18, 1996 Plaintiffs' Class Action Complaint for Disgorgement of Funds Wrongfully Collected and for Injunctive Relief filed in the Superior Court of the State of Washington in Okanogan County.

July 15, 1996 Defendants' Answer filed in Okanogan County Superior Court.

January 29, 1997 Plaintiffs' Motion for Class Action Certification filed in Okanogan County Superior Court.

February 3, 1997 Plaintiffs' Memorandum in Support of Motion for Class Certification filed in Okanogan County Superior Court.

March 3, 1997 Defendants' Motion to Dismiss for Failure to Join the Social Security Administration as a Necessary and Indispensable Party, and Memorandum in Support of Motion filed in Superior Court.

March 5, 1997 Plaintiffs' Reply Brief in Opposition to Plaintiffs' Motion to Dismiss.

March 28, 1997 Defendants' Amended Answer filed in Superior Court.

March 7, 1997 Defendant's Memorandum in Opposition to Class Action Certification filed in Superior Court.

May 19, 1997 Order Certifying Case to Proceed as a Class Action, Defining the Class, and Denying Defendants' Motion to Dismiss entered by Superior Court.

June 11, 1997 Plaintiffs' Motion for Summary Judgment filed in Superior Court.

July 28, 1997 Defendants' Motion for Summary Judgment and Opposition to Plaintiffs' Motion for Summary Judgment filed in Superior Court.

September 9, 1997 Plaintiffs' Reply Brief filed in Superior Court.

September 17, 1997 Plaintiffs' Motion to Amend Class and Plaintiffs' Motion to Add Additional Defendant filed in Superior Court.

September 18, 1997 Defendants' Response to Plaintiffs' Reply Brief filed in Superior Court.

October 1, 1997 Plaintiffs' Motion to Amend Complaint to Clarify Redress Sought by Plaintiffs filed with Superior Court.

October 17, 1997 Plaintiffs' First Amended Complaint filed with Superior Court.

October 29, 1997 Defendants' Motion to Strike Portions of Amended Complaint.

November 4, 1997 Defendants' Memorandum in Support of Motion for Summary Judgment filed in Superior Court.

November 7, 1997 Order Granting Amendment of Order Certifying Class Action entered by Superior Court.

November 7, 1997 Order Allowing Amended Complaint entered by Superior Court.

November 19, 1997 Plaintiffs' Reply Brief filed in Superior Court.

December 8, 1997 Defendants' Supplemental Memoran-dum in Support of its Motion for Summary Judgment filed in Superior Court.

December 9, 1997 Defendants' Motion to Dismiss filed in Superior Court.

December 12, 1997 Defendants' Memorandum in Support of its Motion to Dismiss filed in Superior Court.

December 16, 1997 Plaintiffs' Brief in Opposition to Defendants' Motion to Dismiss filed in Superior Court.

January 7, 1998 Oral Argument Presented on Motion to Strike Portions of Plaintiffs' First Amended Complaint; Motion to Dismiss; Motion to Strike Outline.

September 29, 1998 Memorandum Opinion in favor of Plaintiffs issued by Superior Court.

December 31, 1998 Defendants' Objection to Plaintiffs' Proposed Order filed in Superior Court.

January 4, 1999 Plaintiffs' Reply to Defendants' Objection to Proposed Order filed in Superior Court.

January 5, 1999 Order Granting Summary Judgment in Favor of Plaintiffs entered by Superior Court.

January 11, 1999 Defendants' Notice of Appeal to Washington State Appellate Court Division III filed in Superior Court.

January 22, 1999 Defendants' Motion to Stay Trial Court Order Pending Appeal filed with Court of Appeals.

January 26, 1999 Defendant's Response to Department's Motion to Stay filed in Court of Appeals.

February 5, 1999 Order of Certification to Washington Supreme Court entered by Court of Appeals.

March 8, 1999 Washington Supreme Court files Ruling Accepting Certification.

April 5, 1999 Washington Supreme Court enters Ruling Accelerating Review and Grants Partial Stay of Trial Court Order.

April 16, 1999 Defendants/Appellants Brief filed in Washington Supreme Court.

May 24, 1999 Plaintiffs'/Respondents' Brief filed in Washington Supreme Court.

May 25, 1999 Motion for Application to file Amicus Curiae Brief and Appear filed by the Commissioner of the Social Security Administration.

May 26, 1999 Order Granting Motion of Commissioner of the Social Security Administration to File Amicus Curiae Brief entered by the Washington Supreme Court.

May 26, 1999 Amicus Curiae Brief for Kenneth Apfel, Commissioner of the Social Security Administration filed in Washington Supreme Court.

June 4, 1999 Appellants' Reply Brief filed in Washington Supreme Court.

June 11, 1999 Respondents' Reply to Amicus Curiae Brief filed in Washington Supreme Court.

June 24, 1999 Oral Argument presented to Washington Supreme Court.

December 2, 1999 Order on Remand to Trial Court Entered by Washington Supreme Court for Additional Information and Findings of Fact.

January 10, 2000 Superior Court Enters Scheduling Order to Regarding Development of Additional Findings of Fact.

January 18, 2000 Defendants file Affidavits from Alan Rhoten; Linda Gil; Karen Kegley Justinen; Tamara Erickson, and the Declaration of Kevin Mccahill in Superior Court.

February 29, 2000 Superior Court Enters Order Directing Defendants to Produce Additional Documents.

March 31, 2000 Superior Court Enters Findings of Fact on Order of Remand from Supreme Court.

June 29, 2000 Defendants/Appellants File Motion to Set Briefing Schedule with Washington Supreme Court.

July 13, 2000 Washington Supreme Court enters Order Establishing Briefing Schedule.

August 21, 2000 Supplemental Brief for the Amicus Curiae Kenneth Apfel, Commissioner of the United States Social Security Administration filed in Washington Supreme Court.

September 5, 2000 Appellants' Supplemental Brief filed in Washington Supreme Court.

October 2, 2000 Plaintiffs'/Respondents' Supplemental Brief filed in Washington Supreme Court.

October 16, 2000 Appellants' Reply Brief filed in Washington Supreme Court.

November 8, 2000 Additional Oral Argument After Remand Presented to Washington Supreme Court.

October 11, 2001 Washington Supreme Court files its Decision Terminating Review.

October 31, 2001 Appellants file Motion for Reconsideration in Washington Supreme Court.

December 14, 2001 Order Denying Appellants' Motion for Reconsideration is entered by Washington Supreme Court. Washington Supreme Court Mandate issued.

January 22, 2002 Appellants' file Motion to Stay Pending review by the Supreme Court of the United States. Motion for Stay is denied by the Washington Supreme Court.

January 28, 2002 Appellants' Application to Recall and Stay Mandate of Washington Supreme Court submitted to Justice O'Connor.

January 29, 2002 Order Recalling and Staying Mandate of Washington Supreme Court pending receipt of response issued by Justice O'Connor.

February 5, 2002 Respondents' Response to Application to Recall and Stay Mandate in Supreme Court of the United States.

February 14, 2002 Appellants' Reply to Respondents' Opposition filed in Supreme Court of the United States.

February 15, 2002 The Solicitor General is invited by the United States Supreme Court to file a brief expressing the view of the United States.

March 1, 2002 Solicitor General files Response to Application for Recall and Stay of Mandate of the Washington Supreme Court in Supreme Court of the United States.

March 6, 2002 Respondents' Supplemental Brief in Opposition to Application to Recall and Stay of Mandate of Washington Supreme Court filed in Supreme Court of the United States.

March 13, 2002 Application to Recall and Stay of Mandate of Washington Supreme Court referred to the Court by Justice O'Connor and Granted by Supreme Court of the United States.

(ORDER LIST: 535 U.S.)

WEDNESDAY, MARCH 13, 2002

ORDER IN PENDING CASE

01A557 WASHINGTON DEPARTMENT OF SOCIAL & HEALTH SERVICES, ET AL., V. GUARDIANSHIP ESTATE OF DANNY KEFFELER, ET AL.,

The application for stay presented to Justice O'Connor and by her referred to the Court is granted and it is ordered that the stay granted by Justice O'Connor on January 29, 2002 shall continue and the mandate of the Supreme Court of Washington, case No. 67680-1, issued on December 14, 2001, is stayed pending the timely filing and disposition of the petition for a writ of certiorari. Should the petition for a writ of certiorari be denied, this stay shall terminate automatically. In the event the petition for a writ of certiorari is granted, the stay shall terminate upon the issuance of the mandate of this Court.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF OKANOGAN

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, GUARDIAN, AND OTHER PERSONS SIMILARLY SITUATED, Plaintiff, vs. STATE OF WASHINGTON, DEPARTMENT OF SOCIAL and HEALTH SERVICES and DEPARTMENT OF LICENSING, Defendant.	No. 96-2-00157-2 CLASS ACTION COMPLAINT FOR DISGORGEMENT OF FUNDS WRONGFULLY COLLECTED AND FOR INJUNCTIVE RELIEF

COMES NOW the above named Estate of Danny Keffeler, by and through its Guardian Wanda Pierce, acting through their co-counsel Rodney Reinbold, of REINBOLD and GARDNER, P.O. Box 751, Okanogan, Washington 98840 and Richard B. Price of RICHARD B. PRICE, P.S., INC., P.O. Box 1687, Omak, Washington 98841, on their own behalf and on the behalf of all other persons similarly situated, and for cause of action against the Defendant, State of Washington asserts and alleges as follows:

I.

JURISDICTION AND VENUE

1.1 Jurisdiction. Superior Courts are invested with authority to resolve claims for injunctive relief.

1.2 Venue. The Plaintiffs are residents of the County of Okanogan, State of Washington such that venue in the above-entitled Court is proper.

II.

PARTIES

2.1 Plaintiff Representative Guardianship Estate. Daniel Mark Keffeler was born July 24, 1978. His social security number is 535-92-6777. Danny Keffeler's mother was Mary Lou Pierce, who died September 28, 1990 in an automobile accident. Daniel Mark Keffeler was declared a dependent of the State of Washington by the Okanogan County Superior Court on February 6, 1991, Cause No. 91-7-000609. On December 18, 1990 an order was entered appointing Wanda Pierce, who is Danny Keffeler's grandmother, to be the Guardian of the Estate of Danny Keffeler in Okanogan County Superior Court Cause No. 90-4-00088-4. Wanda Pierce has since served as Danny Keffeler's guardian and brings this action against the State of Washington on his behalf individually and on behalf of all other persons similarly situated.

2.2. Plaintiff Putative Class Members. The members of the Plaintiff Class include all children in the State of Washington receiving social security benefits, whose benefits were or continue to

be appropriated by the State to offset expenses for the child's care.

2.3 Defendant State of Washington. The State of Washington Federal Revenue Unit for the Division of Children and Family Services, a division of the Department of Social and Health Services, and the Washington State Department of Licensing are the Defendants, as to the claims hereinafter recited, and subject to the jurisdiction of the above entitled court.

III.

PROPERTY OF CLASS ACTION PROSECUTION

3.1 Class Action Prerequisite Compliance – CR 23(a). This is a class action seeking equitable relief, including injunctive relief, and ancillary monetary relief and reimbursement to those putative class members who have suffered wrongful appropriation of protected Federal monetary benefits set forth above. Accordingly, Plaintiff seeks on behalf of her ward and on behalf of others similarly situated, an (1) injunction enjoining the State of Washington from charging and collecting monies from the Plaintiffs federally protected social security benefits; (2) creation of a fund to reimburse class members for all funds wrongfully collected; (3) and for costs and reasonable attorneys' fees.

3.2 Impracticality of Joining All Members of the Class as Parties Due to the Size of the Class – CR 23(a) (1). The exact number of persons similarly situated to Plaintiffs are now unknown but presumably believed to be in the

hundreds or thousands. The exact number of persons may be identified from Defendants' records, and such persons can be identified with particularity through appropriate judicial discovery procedures, such that it would be possible to give such persons and/or entities actual notice of these proceedings if required. The class, as denominated in this Complaint, satisfies Civil Rule 23(a) (1) requiring that the number of putative class members be such that it renders joinder impractical.

3.3 Existence of Questions of Law and Fact to the Class – CR 23(a) (2). There exist questions of law and fact, common to the Plaintiffs' claim and the claims of the putative class members. The factual and legal issues connected with the claims for class relief all relate to the conduct of the Defendant, State of Washington.

3.4 Questions of law and fact common to Plaintiffs and all members of the putative class include, but are not limited to:

A. Whether Defendant's practice of billing and collecting monies from the Plaintiffs federally protected Social Security benefits to offset costs which the State is required by law to pay violate the Plaintiffs civil rights, constitutional rights, statutory protection and is wrongful of common law;

B. Whether Defendant's acts alleged in this Complaint are the proper subject for injunctive relief.

3.4 Claims of the Representative Parties are Typical of Claims of the Class – CR 23(a) (3). The claims of the representative are similar to all other putative class members in that the Plaintiff

has been wrongfully charged and deprived of property in violation of the law the same as or similar to all other putative Plaintiffs. The representatives of the class will continue to be subjected to unlawful charges and deprivation of property without redress.

3.5 Plaintiffs' action for class relief does not raise antagonistic interests among putative class members, as all the major issues are common to all class members and all class members have an interest in obtaining the same relief. The obtaining of relief by one class member will not unreasonably detract from or jeopardize other class members' interests.

3.6 The issue whether Defendant has the legal right to invade Plaintiffs federally protected Social Security benefits is not only typical but identical for the class representative and the putative class members alike. As such, Civil Rule 23 (a) (3) is satisfied.

3.7 Adequate Representative – Civil Rule 23(a) (4). The Plaintiff representative comes before this Court in the same capacity as any other litigant seeking redress without regard to their race, religion or financial status. The adequacy of Plaintiff's representation depends upon the capacity of their legal counsel to adequately prosecute the case. Plaintiffs' counsel are experienced trial attorneys, one of whom has considerable experience in class action litigation, having successfully prosecuted numerous class action cases. Plaintiffs' counsel have the necessary skills, expertise and competency to adequately represent the Plaintiffs' interest and

those of the class. The Plaintiff representative is ready and willing to bring this action in a representative capacity on behalf of and for the protection of the putative class.

3.8 Class Action Maintenance Pursuant to CR 23 (b). The Plaintiffs' claims satisfy the conditions of Civil Rule 23 (b) (1), (2) and (3).

A. CR 23 (b) (1) (A) and (B). The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for the Defendant and would also create the risk of adjudication with respect to individual members of the class, which would, as a practical matter, be dispositive of the interests of other parties not parties to the adjudication.

B. CR 23 (b) (2). The Defendant has acted on grounds generally applicable to all putative class members, making final injunctive relief appropriate with respect to the class as a whole. Specifically, the Defendant has acted on grounds generally applicable to the class by imposing and implementing a uniform policy of charging and collecting monies from minor Social Security recipients to offset the costs of their care for which the State is legally obligated to pay without wrongfully appropriating federally protected benefit payments. Defendant's uniform conduct has and will continue to, unless abated, affect every putative class member alike, thereby making appropriate final mandatory injunctive relief pursuant to Civil Rule 23 (b) (2).

C. CR 23 (b) (3). Alternatively, the resolution of the limited legal and factual questions pertaining to the putative class members predominates over any questions affecting only individual members, such that the prosecution as a class action is superior to other available methods for the fair and efficient adjudication of this controversy. In this regard, there should be little, if any, interest in individual members of the class controlling the prosecution of a separate action for this relief, since the relief sought is to (1) require reimbursement for wrongful appropriation of federally protected social security benefits; and (2) enjoin future wrongful conduct; and (3) eliminate the practice of wrongful charges. This action is a superior method in preventing future economic and pecuniary loss to hundreds and possibly thousands of Washington minor citizens. The class will benefit from redress from the ongoing action, which if left to hundreds of individual actions could greatly congest the Superior Courts of this State. Any difficulties which may be encountered in this action will be slight compared to the impracticality of having several hundred individual members of the putative class bringing individual actions and thereby unnecessarily burden the courts throughout the State of Washington. This class litigation is a fair, efficient and expeditious vehicle for providing redress to both unnamed and named Plaintiffs and to as yet unidentified class members. This action is superior to any other available method for the fair and efficient adjudication of controversy. The conditions of Civil Rules 23 (b) (3) are satisfied.

IV.

GRAVAMEN OF PLAINTIFFS COMPLAINT

4.1 Danny Keffeler's Mother, Mary Lou Pierce, was killed in an automobile accident on September 28, 1990. She was survived by her son Danny Keffeler who qualified for child's benefits pursuant to Mary Lou Pierce's Social Security account. This benefit was an earned benefit and not a benefit under the Social Security Insurance program.

4.2 The Social Security Administration appointed Danny Keffeler's grandmother, Wanda Pierce, who was serving as guardian of his estate as representative payee, to receive and disburse his social security check.

4.3 Following the death of Mary Lou Pierce, Danny Keffeler was placed in foster care, which care was financed by the Washington State Department of Social and Health Services.

4.4 Pursuant to a uniform policy adopted and employed by the State of Washington, which policy is applied to all foster care children who receive Social Security benefits under like circumstances, the State of Washington applied to the Social Security Administration to become the protective payee for Danny Keffeler.

4.5 On April 20, 1991 the Social Security Administration made a determination to appoint the State of Washington Department of Social and Health Services (DSHS) Trust Fund Unit to become the representative payee for Danny Keffeler.

4.6 As a result of the State's being appointed, it commenced receiving Danny Keffeler's Social Security benefit payments from which it paid itself a generous part of the benefits allegedly as remuneration for acting as protective payee.

4.7 From August 20, 1991 until July 16, 1993 the State of Washington did not remit any money whatever to Danny Keffeler, and, instead, paid his social security benefits to itself, pursuant to its uniform policy, to mitigate the cost of the foster care it was legally required to provide.

4.8 As a result of the State's action and uniform policy, Plaintiff was wrongfully deprived of federal benefits protected by law, 42 USC 407, from appropriation by the State or otherwise, in violation of the *U.S. Constition, art. 6.* This deprivation was imposed upon his estate by the State of Washington which was recklessly indifferent to the law.

4.9 On April 26, 1991, Rodney M. Reinbold, acting as the attorney for Wanda Pierce, Guardian for the Danny Keffeler Estate, objected to the State's unauthorized payments to itself. This objection ripened into an appeal to the Social Security Administration Office of Hearings and Appeals.

4.10 On July 16, 1993 Administrative Law Judge John R. Hood reinstated Wanda Pierce as the representative payee for said Plaintiff.

4.11 The State of Washington has pursued and continues to pursue a relentless campaign to obtain Danny Keffeler's Social Security benefits in violation of the federal law protecting said benefits.

4.12 In pursuit of the State's wrongful campaign, the State of Washington:

A. Filed a motion for order to show cause in Okanogan County Superior Court Cause No. 90-4-00088-4 seeking:

(1) To remove Wanda Pierce as Danny Keffeler's guardian because she refused to turn over Danny Keffeler's protected social security benefits to the State of Washington; and

(2) For an order requiring the Guardian to give over Danny Keffeler's Social Security payments to its Trust Unit; and

(3) That the State's Trust Unit be substituted as Guardian for Danny Keffeler so that the money could be appropriated by the State of Washington.

B. Improperly filed a claim in the Danny Keffeler estate for the purpose of requiring the Estate to pay for Danny Keffeler's support from his Social Security benefits, in direct derogation of the Federal Law as codified in 42 USC 407 and as interpreted by the United States Supreme Court in *Philpott v. Essix County Board*, 409 US 413, 34 L. ED. 2d 608, 93 S. Ct. 590 (1972); *Bennett v. Arkansas*, 485 US 395, 99 L. Ed. 2d 455, 108s ct 1204 (1988); Brinkman v. Rahm, 878 F.2d 263 (1989).

C. At some time before March 12, 1994 the State filed a further application to become the protective payee for Danny Keffeler, which application was granted on March 12, 1994. After that date no further money was received by Danny

Keffeler from his mother's social security benefits until after his further successful appeal.

D. Without notice to the Guardian, or her attorney, or to any other person, the State of Washington filed a Notice of Appeal to the Appeals Council, Office of Hearings and Appeals in Falls Church, Virginia, which ex parte action resulted in a remand of the entire Social Security case back to the Office of Hearings and Appeals in Spokane, Washington.

E. On remand Administrative Law Judge Lloyd Tunik, again determined that Danny Keffeler's grandmother should be the protective payee for Danny Keffeler.

F. As part of the remand hearing Danny Keffeler's attorney was authorized to charge $5,490 in connection with this end run attempt by the State legal proceedings.

G. The State of Washington has now appealed Judge Tunik's decision to the Appeals Council in Arlington, Virginia.

V.

CAUSES OF ACTION

5.1 The State of Washington, acting under color of State law, through its policy recited above, has and continues to act irrationally, invidiously and arbitrarily and capriciously, thereby violating the civil rights of the Plaintiffs, and of all other persons (foster children) similarly situated, contrary to the Civil Rights Act, 42 USC 1983. (*Robinson v. Seattle*, 119 Wn 2d 34 (1994).

5.2 The State of Washington has acted and continues to act to the deprivation of Danny Keffeler, and all other class members, without due process of law in violation of the United State's Constitution Amendment XIV and Washington State's Constitution.

5.3 The State of Washington discriminates against Plaintiff and all other foster children who receive Social Security benefits by subjecting them to a lower standard of living than children who are not so situated.

5.4 The State of Washington maliciously, recklessly and wantonly is invading federally protected funds for its own improper advantage, to the detriment of Plaintiff and all other foster children's financial and emotional well-being.

VI.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays as follows:

6.1 For a permanent injunction enjoining the State of Washington from taking any further action whatsoever to invade the federally protected Social Security funds of the Plaintiff and children similarly situated; and

6.2 For a judgment against the State of Washington for establishment of a fund for the amount of all federally protected funds it has collected from Plaintiff and all other persons similarly situated, to be disbursed to Plaintiff class members as directed by the Court; and

6.3 For a judgment against the State of Washington for attorneys fees incurred to date of this pleading and all other attorney fees incurred in their effort to defend the Federally protected Social Security funds of Danny Keffeler and children similarly situated; and

6.4 For Plaintiff's attorney's fees and costs incurred in this action; and

6.5 For augmentation of a Lode Star attorney's fee pursuant to an appropriate multiplier; and

6.6 For such other and further relief as to the court shall seem just equitable and proper.

DATED this 18 day of April, 1995.

REINBOLD and GARDNER

By: //s//
Rodney Reinbold, WSBA# 4656
Co-Counsel for Plaintiffs

Richard B. Price, P.S., Inc.

By: //s//
Richard B. Price, WSBA #3203
Co-Counsel for Plaintiffs

The undersigned Wanda Pierce, Guardian for the Estate of Danny Keffeler, and Danny Keffeler have read the within and foregoing complaint and do

hereby declare they believe that the contents thereof to be true and correct.

//s//
Wanda Pierce, Guardian for
The Estate of Danny Keffeler

//s//
Danny Keffeler, a Minor Person

SUPERIOR COURT OF WASHINGTON
FOR OKANOGAN COUNTY

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, GUARDIAN, AND OTHER PERSONS SIMILARLY SITUATED, Plaintiffs, v. STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES AND DEPARTMENT OF LICENSING, Defendant.	No. 96-2-00157-2 ANSWER

Christine O. Gregoire, Attorney General, and Dawne C. Talbott-Lloyd, Assistant Attorney General, appear on behalf of defendant, State of Washington, Department of Social and Health Services, and answer plaintiffs' complaint as follows:

1.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 1.2, 2.1, 2.2, 3.1, 3.2, 3.7, 4.1, 4.2, 4.9, and 4.12(F).

2.

Defendant admits paragraphs 1.1, 2.3, 4.3, 4.4, 4.5, 4.10, 4.12(E), 4.12(G).

3.

As to the allegations in paragraph 4.7, defendant, as designated representative payee for Danny Keffeler, received social security benefits from July 1991 through March 1993. The monies received were used toward the cost of Danny Keffeler's foster care to provide food, shelter and clothing.

As to the allegations in paragraph 4.12(A), defendant admits that it filed a motion for order to show cause in Okanogan County Superior Court.

As to the allegations in paragraph 4.12(C), defendant admits its application to become the protective payee for Danny Keffeler was granted on March 12, 1994.

As to the allegations in paragraph 4.12(D), defendant admits it filed a Notice of Appeal to the Appeals Council, Office of Hearings and Appeals in Falls Church, Virginia.

4.

Defendant denies paragraphs numbered 3.3, 3.4(A), 3.4(B), 3.4, 3.5, 3.6, 3.8(A), 3.8(B), 3.8(C), 4.6, 4.8, 4.11, 4.12(B), 5.1, 5.2, 5.3, 5.4.

5.

Defendant denies each and every allegation in plaintiffs' complaint not otherwise specifically admitted.

DATED this 10th day of July, 1996.

CHRISTINE O. GREGOIRE
Attorney General

//s//
DAWNE C. TALBOTT-LLOYD
Assistant Attorney General
WSBA No. 24790
Attorneys for State of Washington
Dept. of Social & Health Services

SUPERIOR COURT OF WASHINGTON
FOR OKANOGAN COUNTY

GUARDIANSHIP ESTATE OF DANIEL KEFFELER, BY WANDA PIERCE, GUARDIAN, AND OTHER PERSONS SIMILARLY SITUATED, Plaintiff, v. STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES AND DEPARTMENT OF LICENSING, Defendant.	No. 96-2-00157-2 AMENDED ANSWER OF DEPARTMENT OF SOCIAL AND HEALTH SERVICES

Christine O. Gregoire, Attorney General, and DEBRA E. CASPARIAN, Assistant Attorney General, appear on behalf of defendant, State of Washington, Department of Social and Health Services (Department), and pursuant to CR 15(a), amend their answer to plaintiff's complaint as follows:

IV.

GRAVAMEN OF PLAINTIFF'S COMPLAINT

4.3 The Department denies that Daniel Keffeler was placed in foster care after the death of

his mother, Mary Lou Pierce. Daniel Keffeler was voluntarily placed in foster care by his mother in 1988; Daniel Keffeler remained in foster care after his mother's death.

4.4 The Department denies the allegation contained therein that it applied to the Social Security Administration to become the protective payee for Daniel Keffeler.

4.12 The Department denies the allegations contained in paragraph 4.12(C) that the Department applied to become the protective payee for Daniel Keffeler at some time before March 12, 1994.

The Department denies each and every allegation in plaintiff's complaint not otherwise specifically admitted in previously filed Answer.

DATED this 5th day of March, 1997.

CHRISTINE O. GREGOIRE
Attorney General

/s/
DEBRA E. CASPARIAN
Assistant Attorney General
WSBA No. 26354
Attorneys for State of Washington
Dept. of Social & Health Services

SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF OKANOGAN

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, GUARDIAN, AND OTHER PERSONS SIMILARLY SITUATED, Plaintiff, vs. STATE OF WASHINGTON DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Defendant.	No. 96-2-00157-2 DECLARATION OF FACTS IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

RODNEY REINBOLD, makes the following declaration in support of Plaintiff's Motion for Summary judgment.

The Notebook, attached, contains the various documents I have collected which are of significance to this matter. Because this case has the potential of generating numerous pleadings containing duplicate exhibits, it is respectfully suggested that we agree to number exhibits sequentially with Plaintiff reserving numbers 1 through 50 and Defendants having numbers 50 – 100. It is hoped that defendants will make reference to the documents contained in the notebook and will not duplicate and renumber the exhibits.

THE HISTORY OF DANNY KEFFELER'S CASE

Danny Keffeler was born on July 24, 1978. Danny Keffeler, Christopher Keffeler, and Sarah Keffeler became entitled to receive Title II Social Security Benefits when their mother, Mary Lou Pierce, died in an automobile accident on September 28, 1990.

Danny Keffeler became a dependent of the State of Washington in February of 1991, Okanogan County Superior Court Cause No. 91-7-0006-9. Danny has continuously lived in foster homes ever since.

On November 13, 1990, Danny Keffeler's maternal grandmother, Wanda Pierce, petitioned to be appointed guardian of Danny Keffeler's estate, Okanogan County Superior Court Cause No. 90-4-00088-4. Wanda Pierce was so appointed on December 19, 1990, Exhibit 25[1], Doc. 12.[2] On or about April 20, 1991, Wanda Pierce received notice from the Social Security Administration that it planned to make the State of Washington DSHS Trust Fund Unit the protective payee to receive Danny Keffeler's monthly Social Security checks. Exhibit 1. On April 26, 1991, Mr. Reinbold objected to this plan stating:

---

[1] Exhibit 25 is the entire file for Guardianship, Okanogan County Superior Court No. 90-4-00088-4. The index precedes the file.

[2] The various documents which are a part of the Guardianship case are referenced by their Docket Numbers assigned by the Clerk of the Court. See the index at the front of Exhibit 23 which is an index of the docket numbers.

> "On behalf of Wanda Pierce, who is now protective payee and on behalf of the Keffeler Guardianship, we do hereby object to the deposit of these funds into the DSHS Trust Fund Unit. Such a deposit is unnecessary. The guardianship is now being administered by the Superior Court of Okanogan County. If the Social Security Administration or anyone has an objection to the manner in which the funds are being paid or retained, they have the legal right to make objections in the guardianship proceeding. We are presently retaining the checks for both Dan and Sarah."

Exhibit 2.

On July 17, 1991, the Social Security Administration notified Mr. Reinbold that it was naming DSHS Trust Fund Unit as Representative Payee. Exhibit 6.

On August 22, 1991, Mr. Reinbold received a formal notice from the Social Security Administration that Mrs. Pierce should give up the money in the Guardianship account to the Social Security Administration. Exhibit 7.

Wanda Pierce appealed the determination to appoint the Trust Fund Unit to the Office of Hearings and Appeals, where the matter was heard by Administrative Law Judge John R. Hood on October 19, 1992. Judge Hood asked for additional briefing which was furnished on December 7, 1992. Exhibit 8. In that brief the children argued that

since the Guardianship account was supervised by the Superior Court Judge, that the State of Washington could make its claim for any support it was legally entitled to receive in the Guardianship proceeding. This solution was not acceptable to the State because there is no obligation on the part of a child to pay for his own support from Social Security benefits.

Beginning in July of 1991, the DSHS Trust Fund Unit started to receive Danny Keffeler's Social Security Benefits and received the benefits through March of 1993. (See DSHS Memorandum of Authorities re: Show Cause filed in the Guardianship File, Exhibit 15, Docket No. 30, p. 2) The accounting attached to the State's memorandum shows that the DSHS Trust Fund Unit paid to itself the sum of $4,998 as "reimbursement to DSHS for foster care" during this period of time.

On January 16, 1993, Judge Hood reinstated Wanda Pierce as protective payee. Exhibit 9.

Mrs. Pierce received Danny Keffeler's Social Security checks from April of 1993 until March 2, 1994.

On February 9, 1994, the State of Washington filed a creditor's claim in the Guardianship Estate, Okanogan County Superior Court Cause No. 90-4-00088-4. Exhibit 23. Docket No. 23.

Also on February 9, 1994, the State of Washington filed a Motion for an Order to Show Cause as to why:

1. The limited guardianship should not be modified to assign checks to the DSHS trust unit;

2. The Maternal Grandmother should not be removed as guardian of the estate; and

3. The Maternal Grandmother should not be required to pay all Social Security funds to the Trust Fund Unit. Docket No. 21-30.

The Guardianship Estate filed a Responsive Brief, Docket No. 31, and notified Judge Edwards, by letter, of the United States Supreme Court decision forbidding diversion of the children's Social Security checks to reimburse the State for welfare it had advance. *Philpott v. Essex County Welfare Board*, 34 L. Ed. 608. Exhibit 26. The State then abandoned its action in the Superior Court, at least temporarily.

Somehow, the State of Washington was able to persuade the Appeals Council, Office of Hearings and Appeals at Falls Church, VA 22041 to reverse Judge Hood's Decision and remand the matter back to the Administrative Law Judge for reconsideration. The State of Washington Department of Social and Health Services mailed a letter to the Appeals Council asking for a review, based upon DSHS's reading of the appeal statute which it claimed prevented the Office of Hearings and Appeals from reversing an administrative decision, to appoint the State as protective payee. Exhibit 19.

However, the ex parte letter of June 14, 1994 to the Appeals Council does not explain the Council's action since the Appeals Council remand predated and DSHS letter (compare Exhibit 15, Notice of Order of Appeals Council remanding decision to Administrative Law Judge, dated June 6, 1994, to Exhibit 19, the letter from DSHS dated June 14, 1994).

The children filed a Motion for Reconsideration through their grandmother pointing out that the Appeals Council decision was made without notice to them and further argued that the Sate of Washington was not in any way prejudiced because it had already filed a claim in the guardianship estate which was under consideration. Exhibit 16.

In a responsive letter to the Administrative Law Judge, the Exhibit 19, DSHS explained how the appeal came before the Appeals Council claiming:

> "The Social Security Administration indicated that DSHS is the preferred representative payee under their rules, but that they could not overrule a decision by an Administrative Law Judge, even in the light of new facts. DSHS asked that this decision be reconsidered. The reconsideration request was forwarded to the payment center for guidance. The payment center forwarded the Request for Reconsideration to the Appeals Council."

Exhibit 19 letter from Michael Hobbs, DSHS Regional Program Director.

The remand, ordered by the Appeal Council was referred to Administrative Law Judge Lloyd Tunik.

Judge Tunik defined the issues under consideration in a letter dated May 3, 1995. Exhibit 24. Judge Tunik wrote:

> "As to the first general issue (whether the Administration correctly removed the claimant's representative payee, Wanda B. Pierce) it is now established that the Administration's determination was based upon a finding that Wanda B. Pierce was not spending any of the claimant's monthly benefits for the current care of the claimant but saving it for future use for the claimant or delivery to the claimant. On review of the current record, including Exhibit 4, I am unable to identify what facts or events caused the Social Security Administration to make this finding or what specific guideline was breached by Wanda B. Pierce. Specifically, what did Wanda B. Pierce refuse to do (by way of spending any of the claimant's monthly benefits) for the current care of the claimant and how did that action constitute a failure to comply with what specific guideline under Subpart U?
>
> As to all other existing issues or proposed issues, this is the time to state such and to give a description of the facts you believe relevant or material to each such issue."

On May 24, 1995, Administrative Law Judge Tunic again wrote and enclosed a copy of the response from DSHS dated May 9, 1995, wherein Michael R. Hobbs wrote:

> "Please consider this letter and the enclosed materials in answer to your

letter of May 3, 1995. May I suggest that the event that caused the Social Security Administration to determine that Wanda B. Pierce was not spending any of the claimant's monthly benefits for the current care of the claimant was the assertion by an employee of DSHS that the claimant's current needs were being met by foster care payments. This assertion may have been made by inference as it is a routine matter of DSHS to apply for Social Security Benefits with children who are in foster care and the Social Security Claims Representative was probably familiar with the names of the employee of DHSS."

"I have enclosed 10 pages of printed materials to support the allegation that the claim of "current maintenance" has been met by foster care payments from 6/1/91 to the present. The first two pages of materials are the description of foster care payments made using Service Code 3210. The description, under the heading Program: Child Foster Family Care, clearly includes maintenance defined by Subpart U of 20 CFR 404.2040(a). The next 8 pages make up the record payment made on Daniel's behalf to various providers. You will find that a Service Code 3210 payment has been made for every month since 6/1/95. To my knowledge, Wanda Pierce has made no contribution

towards the claimant's maintenance from the Social Security Benefits she has received."

On March 3, 1995, Rodney Reinbold submitted a brief to Judge Tunik contending, among other things, that Wanda Pierce was not required to reimburse the State of Washington for the cost of foster care under the doctrine of *Philpott v. Essex County Welfare Board*, supra. Exhibit 32, p. 17-18.

On June 21, 1995, Judge Tunik reinstated Wanda Pierce as protective payee for Danny Keffeler. Exhibit 21.

As to the question of whether Wanda Pierce was required by the guidelines to reimburse the costs of Foster Care, Judge Tunik ruled:

"Wanda Pierce did not spend any of the claimant's benefits by payments to DSHS Trust Fund Unit toward deferring the cost of foster care for the claimant. The guidelines can be found to require spending if the claimant has current maintenance needs that are not otherwise met or if the claimant is indebted for his current maintenance (cost incurred in obtaining food, shelter, clothing, medical care and personal comfort items) and the representative payee is presented with a claim. There is no evidence that the claimant's current maintenance needs are not being met, that the claimant has been indebted for maintenance to DSHS Trust fund Unit or anyone else or that

any claim has been presented to Wanda Pierce."

On August 2, 1995, Michael Hobbs of DSHS filed another appeal to the Appeals Council, in Falls Church VA. In this appeal, it was claimed that the Office of Hearings and Appeals and the Appeals Council did not have jurisdiction to change the representative payee since this was an administrative decision. Exhibit 25.

This appeal has since been abandoned by the Department.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at Okanogan, WA on June 9, 1997.

/s/
RODNEY REINBOLD, WSBA #4656
Attorney for Plaintiff

Exhibit 1 – Page 1 of 2

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Social Security Administration

P.O. Box 1488
501 Yakima Ave.
Wenatchee, WA 98807
April 8, 1991
NOTICE OF PLANNED ACTION
Phone: 1 800 284 5772
Rec'd 4/25/91
from Wanda

MS. WANDA PIERCE
PO BOX 122
OMAK, WA 98841

Dear MS. PIERCE:

We are writing to let you know that we plan to make DSHS TRUST FUND UNIT the representative payee for DAN KEFFLER. This means that DSHS TRUST FUND UNIT would get MR. KEFFLER'S Social Security checks each month and use this money for MR. KEFFLER'S needs. The facts we have show that this would be best for MR. KEFFLER.

If You Disagree

If you think that we should pay MR. KEFFLER'S checks to someone else, you should let us know right away. You have 10 days from the date of this letter to do this.

Exhibit 1 – Page 2 of 2

If We Do Not Hear From You

If we do not hear from you in the next 10 days, we will send MR. KEFFLER'S checks to DSHS TRUST FUND UNIT.

If You Have Any Questions

If you have any questions, you should call, write or visit any Social Security Office. If you call or visit our office, please have this letter with you and ask for MRS. ENGLAND. The telephone number is 1 509 662 1733. We can answer most questions over the phone.

//s//

CLAIMS REPRESENTATIVE

CE

Exhibit 7 – Page 1 of 4

Social Security Administration
Retirement, Survivors and Disability Insurance
Important Information

Western Program Service Center
1221 Nevin Avenue
P.O. Box 2000
Richmond, California 94802
Date: August 20 1991
Claim Number: 538-58-5094C1

WANDA B PIERCE
FOR DAN M KEFFELER
RT 1 BOX 128C
OMAK WA 98841

We have decided that it would be best for DAN M PIERCE to have his checks sent to another payee.

If You Saved Any Money

While you were DAN M PIERCE'S payee, you may have saved some money for him. If you have, you should return it to us unless you have already made other plans with us for handling it. The money you will need to return includes:

- Saved and invested benefits.
- Interest earned from these savings and investments.
- Money you have left over from any checks we sent you.

- Any checks you might receive after the date of this letter.

How To Pay Us Back

To do this, you can write us a check or money order. Make it out to the Social Security Administration. Be sure to write "Conserved Funds for DAN M PIERCE, 538-58-5094C1" on that check or money order. Please mail it in the enclosed envelope.

What You Need To Do

As soon as possible, you should send us a final report of how you used the benefits you received. Please use the enclosed "Representative Payee Report" to do this. It tells you the period of time for which you have to report.

Enclosure(s):
SSA-623-F3
Return Envelope

R See Next Page

Do You Think We Are Wrong?

If you think we are wrong, you have the right to appeal. We will correct any mistakes and we will look at any new facts you have. A person who did not make the first decision will decide MR. PIERCE'S case.

- You have 60 days to ask for an appeal.
- The 60 days start the day after you receive this letter.
- You must have a good reason if you wait more than 60 days to ask for an appeal.

If You Want Help With Your Appeal

You can have a friend, lawyer or someone else help you. There are groups that can help you find a lawyer or give you free legal services if you qualify. There are also lawyers who do not charge unless you win your appeal. Your local Social Security office has a list of groups that can help you with your appeal.

If you get someone to help you, you should let us know. If you hire someone, we must approve the fee before he or she can collect it. And if you hire a lawyer, we will withhold up to 25 percent of any past due benefits to pay toward the fee.

If You Have Any Questions

If you have any questions, call us toll free at 1-800-234-5772. We can answer most questions over the phone. You can also write or visit any Social Security office. The office that serves you area is located at:

DISTRICT OFFICE
ROOM G30
301 YAKIMA STREET
WENATCHEE, WA 98801

Exhibit 7 – Page 4 of 4

If you do call or visit an office, please have this letter with you. It will help us answer your questions.

//s//
F. J. Hagel
Assistant Regional Commissioner,
Processing Center Operations

Exhibit 9 – Page 1 of 4

DEPARTMENT OF
HEALTH AND HUMAN SERVICES
Social Security Administration
OFFICE OF HEARINGS AND APPEALS

DECISION

IN THE CASE OF	CLAIM FOR
Wanda B Pierce OBO	Retirement and Survivors Insurance
Sarah L Keffeler (Claimant)	(Representative Payee Issue)
Mary Lou Pierce (Deceased) (Wage Earner)	538-58-5094 (Social Security Number)

This case is before the undersigned Administrative Law Judge on Request for Hearing filed on September 5, 1991. After due notice, the claimant appeared and testified at a hearing that was held on October 19, 1992. The undersigned has carefully considered all the documents identified in the record as exhibits, the testimony at the hearing and arguments presented.

The evidence of record shows that the wage earner, Mary Lou Pierce, died as a result of an automobile accident on September 28, 1990. She left as survivors Richard Keffeler, Chris Keffeler, Sarah Keffeler and Dan Keffeler. Benefit payments due to the survivors were paid to Wanda B. Pierce, the survivor's grandmother, from September 28, 1990,

until April 25, 1991. At that time, a representative of the Washington State Department of Health and Human Services who also represents the Social Security Administration advised the claimant that the future Social Security checks would be paid to the Department of Social and Health Services Trust Fund Unit. See Notice of Planned Action contained in Exhibit 4.

The claimant appeals the proposed change of representative payee. The issue before the undersigned Administrative Law Judge is whether a new representative payee should be selected under 20 CFR 404.2050.

20 CFR 401.2050 contains guidelines on when a new representative payee will be selected. The regulation provides that a new representative payee will be selected when the interests of the beneficiary(s) are not being served by continuing payment to the present payee is no longer able to carry out the payee responsibilities. The rest of the regulation concerns the guidelines used for the appointment of a preferred payee.

In this case the current payee is able to continue as representative payee and wishes to do so. Accordingly, it must be shown that the interests of the beneficiary are not being served by the present payee or claimant, Wanda B. Pierce, before cause exists to change the representative payee.

The facts demonstrate that the claimant, Wanda B. Pierce, the children's grandmother, has been

appointed guardian of the children's estate pursuant to an action filed in the Superior Court of Okanogan County for the State of Washington. See Exhibit 18 showing that the claimant was appointed guardian of the children's estate on December 18, 1990. The undersigned has carefully reviewed the documents concerning the guardianship and is satisfied that the document comports with current Washington State Law.

Apparently the guardian is justifiably concerned as to how the Social Security payments will be used by the state. She is particularly concerned about whether or not any excess monies will be properly conserved for the children until they reach the age of majority.

It is of note that the State of Washington had knowledge of the Petition for Appointment of Guardian and was involved with the proceedings. Objections could have been made at that time if the State felt that the claimant, Wanda B. Pierce, was not a proper person to be appointed as guardian of the children's estates.

Apparently from the record there has been some problem with payment of the State for foster care for the children involved. It is of note that, when the guardianship ends, the Judge of Okanogan County would, in essence, supervise the distribution of the estate.

If child support was not paid out of the children's assets, the State could request payment through the Superior Court Judge.

Exhibit 9 – Page 4 of 4

After carefully reviewing the evidence of record, the undersigned finds that cause does not exist, from the record as constituted to justify the appointment of a new representative payee. Accordingly the claimant Wanda B. Pierce, shall remain as guardian of the children's estate and the representative payee for Social Security purposes.

FINDINGS

After careful consideration of the entire record, the Administrative Law Judge makes the following finding:

Cause does not exist to appoint a new representative payee in this case under 20 CFR 404.2050 as discussed above.

DECISION

It is the decision of the Administrative Law Judge that cause has not been shown for a change of representative payee on behalf of the beneficiary pursuant to 20 CFR 404.2050. Wanda B. Price, the beneficiaries' grandmother, will continue to be the representative payee for Social Security benefits.

//s//
JOHN R. HOOD
Administrative Law Judge

January 16, 1993
Date

Exhibit 12 – Page 1 of 3

Social Security Administration
Retirement, Survivors and Disability Insurance
Notice of Change in Benefits

Western Program Service Center
P.O. Box 2000
Richmond, California 94802-1000
Date: MARCH 18, 1994
Claim Number: 538-58-5094C1

WANDA PIERCE FOR DAN M
KEFFELER
BX 122
OMAK WA 98841-0122

We are writing to let you know we are stopping DAN M KEFFELER'S Social Security benefits. The last payment he will receive is the payment made about March 2, 1994.

Why We Cannot Pay MR. KEFFELER

We cannot pay benefits while we check to see who is the best person to receive MR. KEFFELER'S checks and use them for his needs. Until we decide who should receive these checks, we will not send his checks to you.

When we make a decision, we will write you another letter to tell you about it.

Exhibit 12 – Page 2 of 3

Do you Think We Are Wrong?

If you think we are wrong, you have the right to appeal. We will correct any mistakes and we will look at any new facts you have. A person who did not make the first decision will decide MR. KEFFELER'S case.

- You have 60 days to ask for an appeal.
- The 60 days start the day after you receive this letter.
- You must have a good reason if you wait more than 60 days to ask for an appeal.

If You Want Help With Your Appeal

You can have a friend, lawyer or someone else help you. There are groups that can help you find a lawyer or give you free legal services if you qualify. There are also lawyers who do not charge unless you win your appeal. Your local Social Security office has a list of groups that can help you with your appeal.

If you get someone to help you, you should let us know. If you hire someone, we must approve the fee before he or she can collect it. And if you hire a lawyer, we will withhold up to 25 percent of any past due benefits to pay toward the fee.

See Next Page

Exhibit 12 – Page 3 of 3

538-58-5094C1 Page 2 of 2

If you Have Any Questions

If you have any questions, you may call us toll-free at 1-800-772-1213, or call your local Social Security office at 1-509-662-1376. We can answer most questions over the phone. You can also write or visit any Social Security office. The office that serves your area is located at:

DISTRICT OFFICE
ROOM G30
301 YAKIMA STREET
WENATCHEE, WA 98801

If you do call or visit an office, please have this letter with you. It will help us answer your questions. Also, if you plan to visit an office, you may call ahead to make an appointment. This will help us serve you more quickly when you arrive at the office.

/s/
F. J. Hagel
Assistant Regional Commissioner,
Processing Center Operations

EXHIBIT 15 – Page 1 of 6

AC ORDER: REVIEW LEVEL

DEPARTMENT OF HEALTH AND HUMAN SERVICES
SOCIAL SECURITY ADMINISTTATION
OFFICE OF HEARINGS AND APPEALS

ORDER OF APPEALS COUNCIL

REMANDING CASE TO AN ADMINISTRATIVE LAW JUDGE

In the case of	Claim for
Wanda Pierce for Daniel M. Keffeler (Claimant)	Child's Insurance Benefits
Mary Lou Pierce, Deceased (Wage Earner) (Leave blank if same as above)	538-58-5094 (Social Security Number)

Secretary, Department of Social and Human Services,

State of Washington

Interested Party

This case is before the Appeals Council on the request for review filed by the Secretary, Department of Social and Human Services, State of Washington, of the Administrative Law Judge's decision issued on January 16, 1993 with respect to Daniel Keffeler. The request for review was not filed

EXHIBIT 15 – Page 2 of 6

within the prescribed time limit (20 CFR 404.968) but the Appeals Council finds that good cause is shown for the late filing inasmuch as the interested party, the State applicant, was not provided with notice.

In separate decisions issued with respect to Sarah and Daniel Keffeler, sister and brother and children of the deceased wage earner, the Administrative Law Judge found that Wanda Pierce, the children's maternal grandmother, was appointed guardian of their estate pursuant to an action filed in the Superior Court of Okanogan County for the State of Washington on December 18, 1990 and that good cause does not exist for the removal of Wanda Pierce as their representative payee and for the appointment of a new representative payee. Inasmuch as Sarah Keffeler has attained age 18 and has been made her own representative payee, the question of who should act as her representative payee is moot and the Appeals Council in a separate action dismissed a request for review filed by the Secretary, Department of Social Services of the State of Washington, with respect to her.

The hearing tape of the proceedings conducted on October 19, 1992 has been certified as lost; therefore, the record is incomplete. Accordingly, the Appeals Council vacates the hearing decision and remands the case to an Administrative Law Judge to conduct a de novo hearing on the issue of whether the Secretary of Social and Human Services of the State of Washington is the preferred representative payee for Daniel Keffeler. The state of Washington

through its DSHS Trust Fund Unit was appointed by the Social Security Administration as the representative payee of Daniel Keffeler effective August 1991 to use the child's insurance benefits for his current maintenance and to conserve any funds over and above those used each month for his needs. Before the above issue can be decided, however, the Administrative Law Judge will consider and decide whether the claimant, Wanda Pierce, had a standing to file a request for hearing after the Social Security Administration declined to act favorably on her protest to its notice of April 20, 1991 that the child's insurance benefits to which Daniel Keffeler, born July 24, 1978, was entitled would now be paid to the State of Washington, DSHS Trust Fund Unit. This depends on whether Wanda Pierce is the guardian of Daniel Keffeler or is a person who may stand in place of the minor child's parent.

In reaching his conclusion with respect to who should remain the representative payee for Daniel Keffeler, the Administrative Law Judge stated that a court order dated December 18, 1990 named Wanda Pierce as his legal guardian. Exhibit 18/5 through 12 to which the Administrative Law Judge referred, however, shows that Wanda Pierce petitioned the court for a limited guardianship of the estate of the minor children, Sarah and Daniel Keffeler, for the purpose of receipt of $24,000 in life insurance proceeds to be paid on account of the accidental death of their mother and that the court granted such limited guardianship.

In considering whether Ms. Pierce is the legal guardian of Daniel Pierce for the purpose of acting on his behalf to protest the appointment of the DSHS Trust Fund Unit, State of Washington, the Administrative Law Judge should consider that, pursuant to a hearing conducted on February 6, 1991 at which Daniel's father, caseworker, and the juvenile's attorney appeared, the Superior Court of Washington for County of Okanogan, Juvenile Division ordered, after stating that the child's father was afforded full due process, that the child was dependent pursuant to RCW 13.34.030(2) in that he has no parent, guardian or custodian capable of adequately caring for him, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development. The court concluded that it had jurisdiction over the child. No legal guardian for Daniel was identified by the court in considering his dependency. This is not inconsistent wit the statements of Wanda Pierce, herself, made to the Social Security Administration on May 30, 1991 in the presence of her representative, that she is not the legal guardian of Daniel Keffeler but is the guardian of his estate, and that, although Daniel visits her three to five times a month, she does not visit him at his foster home, does not give any money for his care or send him clothing. She further indicated at that time that she is unable to care for Daniel and does not intend to have him in her care in the future (Exhibit 8). The Administrative Law Judge should also consider that as late as April 7, 1993, the dependency of Daniel Keffeler, placed in out-of-home

care under the custody and supervision of the DCFS agency and who has resided out-of-home since April 10, 1989, was reviewed by the court at which proceeding only the child's caseworker and juvenile's attorney appeared, and that consideration had not been given to placement with the child's relatives. The court found that the child was still dependent on the State and that foster care placement should continue. July 1996, the month the child will attain 18, was projected as the date of emancipation from the court's jurisdiction.

If, in light of the above, the Administrative Law Judge finds that Wanda Pierce does not have standing as the legal guardian or other person to stand in place of the child, he will dismiss the request for hearing filed by her on September 5, 1991 under 20 CFR 404.957 and 404.930. If he finds that she does have such standing, he will consider at a proceeding, at which an appropriate State official appears as an interested party, who should be the representative payee of Daniel Keffeler. In this regard, the Administrative Law Judge will consider the evidence detailed above within the context of 20 CFR 404.2040 and 404.2045 which provide that the representative payee must use the funds for the beneficiary's current maintenance before such funds may be conserved for him and that, notwithstanding the requirement to use the funds for current maintenance purposes, it is not inappropriate where the beneficiary receives public assistance, that the Social Security benefit payments be made available by the representative payee to the public assistance

unit. The claimant, in her request for hearing, asserts that Daniel, who is in foster care, does not need the Social Security benefits to which he is entitled and that any use of these benefits for his immediate needs would diminish his support by State funds, suggesting that she, as representative payee, would conserve these funds for his future needs, such as for education, while the cost of his current maintenance is borne by the State of Washington. The Appeals Council observes that it is the position of the Social Security Administration (POMS GN 0502.133B) that an agency/court who is the legal custodian for a child is generally the representative payee of preference. When a social agency or juvenile court is awarded legal custody of a child who is removed from the custody of a parent, the agency/court retains custody of the child even though the agency/court does not have actual physical custody of the child. Further, if the agency places the child into foster care or a group living household, but retains overall control of the child, the agency retains custody.

The Administrative Law Judge may take any further action needed to complete the administrative record.

APPEALS COUNCIL

/s/

Larry K. Banks
Administrative Appeals Judge

/s/

Michael G. Heitz
Administrative Appeals Judge

DATE: May 31 1994

EXHIBIT 20 – Page 1 of 8

SOCIAL SECURITY ADMINISTRATION
OFFICE OF HEARINGS AND APPEALS

ORDER

In the case of Daniel Mark Keffeler, Claimant Mary Lou Pierce, Wage earner	Claim for Survivor's Benefits Wage earner's Social Security Number: 538-58-5094

Since mailing the *MEMORANDUM RE ISSUES AND FACTS*, of April 18, 1995, one response was received. Mr. Michael R. Hobbs, noted that "Point 5" was in error as "DSFG last received the benefits 3/93." This warrants a change in the statements presented in the *MEMORANDUM RE ISSUES AND FACTS*, as do the identification of typographical errors in Point 3 and Point 6, i.e., the word ""help" should have been "held." Other corrections which do not appear to be of substantive importance have also been made.

ORDER

The following facts and events are not in dispute:

Mary Lou Pierce died. She was survived by her children, one of whom is Daniel Mark Keffeler (claimant). The claimant was born on July 24, 1978. On qualifying for child's

Exhibit 20 – Page 2 of 8

benefits on his mother Social Security account, a representative payee had to be appointed for the claimant. The claimant's grandmother, Wanda B. Pierce, was appointed and served as the claimant's representative payee.

On April 20, 1991, the Social Security Administration (Administration) determined that a new representative payee should be appointed and that the State of Washington Department of Social and Health Services (DSHS) Trust Fund Unit was to be the representative payee.[1] (Exhibit 4 at page 1.) On April 26, 1991, Rodney M. Reinbold, acting as the attorney for Wanda Pierce, objected to the action. (Exhibit 5.) This action by Wanda B. Pierce was considered a request for reconsideration. On July 17, 1991, a reconsideration determination issued which advised Mr. Reinbold of the effect of its intended action, which continued to be a change of the representative payee. On September 5, 1991, Wanda B. Pierce filed a *Request for Hearing*. A hearing was held on October 19, 1992.[2] The Appeals Council certified that the tape recording of the hearing (the official record of the hearing) was lost and

1. See 20 C.F.R. 404.902(p), re action that constitutes an initial determination.

2. There is an allegation that there is no transcript because no hearing was held. In conflict with this, the decision states that a hearing was held on October 19, 1992.

remanded the case for a new hearing and decision, with directions relevant to identifying who are appropriate parties to the proceedings.

The standing of individuals and the State of Washington as parties and participants are not in dispute and, for the stated reasons, are as follows:

1 – The claimant is a real party in interest. As he is a minor, there is an issue as to his independent ability to act on his own behalf and a presumption that he cannot. If the claimant wishes to present evidence on his own behalf, he may, but absent evidence that he is a mature individual, able to care for himself and his assets, there will be a continuing presumption of his inability to do so. The claimant has not designated an attorney or other adult to act on his behalf, as provided for under 20 C.F.R. 404.1700 *et seq*. This means that other adults must be looked to as those who properly represent the claimant.[3] As will be seen, there are conflicting interests at work in this case. The decision as to who is a party in interest should take into consideration that reasonable action needs to be taken to be sure that no proper

3. The undersigned bears a legal duty to assist the claimant in so far as seeing to it that there is a full and fair development of the record (both as to the issues and the related facts) and a proper application of the law.

issue is omitted from consideration and that all evidence relevant to a fact in issue be obtained. To further that end, there should be an encouragement of participation by all those who may materially add to my ability to identify the issues and the evidence material to a decision.

2 – The claimant's father is alive. Though the claimant's father has not lost all of his rights as a parent of the claimant, the available record shows that he has not and probably will not take any affirmative action to help his son in the matter now pending. As a parent, whose full parental duties have not been ended, he will be given notice of actions to be taken in this matter and will have a right to respond, as would any party in interest. If he should fail to respond, he will be held to such a failure, as he would if he were a party in interest.

3 – The claimant's maternal grandmother, Wanda B. Pierce, has demonstrated an interest in the claimant's welfare, including acting as the guardian of the claimant's estate under the laws of the State of Washington and acting as the claimant's representative payee. The actions at issue, relevant to her removal as the claimant's representative payee, are not associated with any allegation of misconduct which would result in personal responsibility or liability for funds that have been spent. Her demonstrated interest has been to

preserve the claimant's estate. There is evidence that she wishes to do so for the purpose of enabling the claimant to continue with his education after he is 18 years of age. There is evidence that she has declined active efforts at custodial responsibility over the claimant because of her age and other circumstances. Relevant to the claimant's best interests, no one else appears primarily interested in maximizing the claimant's estate. Wanda B. Pierce, by reason of her blood relationship and demonstrated interest in the claimant's financial well being, is found to have acted *on behalf of the claimant* and will be permitted to continue to act as a party in interest *on behalf of the claimant*.[4]

4 – Based upon the ruling of the Appeals Council and the absence of any objection, the Secretary of the Department of Social and Health Services, State of Washington, Division of Children and Family Services (DSFS), is a party to the proceedings. This status is associated with evidence indicating that DCFS is *in loco parenti* (in the position of a parent). The record indicates that DCFS has been financially responsible for foster care of the

4. As a duly appointed representative payee, Wanda B. Pierce, has no standing to object to her removal. If her financial responsibility were at issue, then she would be entitled to be a party on her own behalf.

claimant. In association with the determination to remove Wanda B. Pierce as representative payee, DCFS was acting as representative payee and spending the claimant's Social Security benefits for foster care through March of 1993.

5 – After March 21, 1995, the undersigned was advised of additional guardianship proceedings, with the appointment of Rob and Cheryl Vanderstoep as guardians of the claimant with specified powers as to the care of the claimant, *excluding* receipt, investment and expenditure of funds. (Superior Court of the State of Washington, County of Okanogan, Juvenile Division, No. 91-7-00006-9.) As yet, Rob and Cheryl Vanderstoep have not participated in this matter. As persons with guardianship responsibility, they will be given notice of actions to be taken in this matter and will have a right to respond *on behalf of the claimant*, as would any party in interest. If they should fail to respond, they will be held to such a failure, as they would if they were parties in interest.

The general issues to be determined are whether the Administration correctly removed the claimant's representative payee, Wanda B. Pierce, and, if so, whether DSHS was properly appointed the claimant's representative payee. As to the issue of removal of Wanda B. Pierce, the Administration determined that Wanda B. Pierce should be removed because she was not spending any of the claimant's

monthly benefits for the current care of the claimant, rather saving it for future use for the claimant or delivery to the claimant. This presents the issue provided by 20 C.F.R. 404.2050:

> " . . . We will select a new payee if we find . . . the present payee –
>
> (a) Has not used the benefit payments on the beneficiary's behalf in accordance with the guidelines in this subpart; . . . ."

The guidelines in the designated subpart are stated in 20 C.F.R. 404.2040.

The last known address of each party and participant is stated after my signature as a recipient of a copy of this ORDER, i.e., those listed under "c.c.:" on page 5. Each party and participant is responsible for notifying me of any change of address and of any error in the address listed for others.

Any motion or request to amend this order shall be submitted before May 15, 1995.

Date: May 3, 1995

/s/
Lloyd Tunik
Administrative Law Judge

c.c.:

Rodney M. Reinbold,
Attorney for Wanda Pierce
P.O. Box 751
Okanogan, WA 98840

Daniel Mark Keffeler,
claimant
Rt. 1 Box 128C
Omak, WA 98841

Dan A. Keffeler,
father of claimant
P.O. Box 555
Okanogan, WA 98840

Rob and Cheryl
Vanderstoep
Rt. 1 Box 128C
Omak, WA 98841

The Secretary of the Department of Social and Health Services, State of Washington,
Post Office Box 9501
Olympia, WA 98507-9501

Attention David W. Coe, Assistant Attorney General

Michael R. Hobbs, SSI Program Manager, DCFS
Department of Social and Health Services
State of Washington,
Post Office Box 45710
Olympia, WA 98504-5710

(K53858DR)

This page intentionally left blank.

EXHIBIT 21 – Page 1 of 12

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
Olympia, WA 98504-5000

May 9, 1995

Lloyd Tunik, Administrative Law Judge
Office of Hearings and Appeals
Suite 770, Rock Pointe Tower
W. 316 Boone Avenue
Spokane, WA 99201

RE: Daniel Mark Keffeler SSN: 538-58-5094

The Honorable Lloyd Tunik:

Please consider this letter and the enclosed materials in answer to your letter of May 3, 1995. May I suggest that the event that caused the Social Security Administration to determine that Wanda B. Pierce was not spending any of claimant's monthly benefits for the current care of the claimant was the assertion by an employee of DSHS that the claimants current needs were being met by foster care payments. This assertion may have been made by inference as it is a routine matter for DSHS to apply for Social Security Benefits when children are in foster care and the Social Security Claims Representative was probably familiar with the names of the employee of DSHS.

EXHIBIT 21 – Page 2 of 12

I have enclosed 10 pages of printed materials to support the allegation that the claimants "current maintenance" has been met by foster care payments from 6/1/91 to present. The first two pages of the materials are the description of foster care payments that are made using service code 3210. The description, under the heading, Program: Child Foster Family Care, clearly includes maintenance a defined in subpart U at 20 CFR 404.2040 (a). The next 8 pages make up the record payments made on Daniel's behalf to various providers. You will find that a 3210 payment has been made for every month since 6/1/95. To my knowledge, Wanda Pierce has made no contribution towards the claimants maintenance from the Social Security Benefits she has received as the claimants representative payee.

Respectfully,

/s/

Michael R. Hobbs
SSI Program Manager, DCFS HDQTRS.
(360) 664-0829

F4 to Record Your Update and/or Proceed
RSRVCOD REVIEW SERVICE CODE SRVCDPX SRVCODMX
Service Code: 3210 LAST Actn: C Actn Date: 06 16 94 Chg Efctv Date: 01 01 91
Name: DCFS FOSTER CARE SVC
Reason for Service: A B C D E F +
Objective :
Division Owner : B
Unit of Srvc : MON
SSN Req :
Rsponsblty Grp : 3
Payment Type : 3
Rate Code : R
Rates: Min Amt : 291.76
W-H OASI Req : N
Cntrct-Lic Req : L
Create ETP rec. :
Service Group: 32
Max No.: Mon: 6 Hrs.:
Cntngncy Allowd: N
Item 21 Req : Y
Fund Source : 1 2 4 5 Q R
Participation : 0
Max Amt : 425.09
Provider Req :
Chng Efctv Date:
Dup allowed? :
Child Adult
Primary X -
Service X :
Units: 1
Prmry Recip Req: Y
Item 21 Max : 012
Payee Req : 2
Efctv Date: : 01 01 93
Placement Req : Y
Supvsr Aprvl Req:
Desc: PROGRAM: CHILD FOSTER FAMILY + Notes: EFFECTIVE 01/01/93, RATES FOR +
CMD: R
Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10---PF11---PF12---
HELP UPDT MORE RSTRT TUTOR CANCL
BU Aa B1—SESSION1 R 21 C 40 10:28 5/09/95

----------Service code description for 3210----------+
Press 'PF3' to Exit
Bottom <....+....1....+....2....+....3....+....4....+....5....+....6>
0001 PROGRAM: CHILD FOSTER FAMILY CARE
0002 SERVICES INCLUDE PLACEMENT AND COUNSELING WITH CHID AND
0003 FOSTER PARENT(S) TO REACH GOALS DEVELOPED FOR THE CHILD/
0004 FAMILY. PAYMENT AT BASIC RATE FOR ROOM, BOARD, CLOTHING AND
0005 PERSONAL INCIDENTALS FOR ALL CHILDREN PLACED IN FAMILY
0006 FOSTER CARE. INCLUDES CASE MANAGEMENT SERVICES PROVIDED BY
0007 DCFS SERVICE WORKERS TO CHILDREN IN SUBSTITUTE CARE AIMED AT
0008 ENABLING THE CHILD AND HIS/HER CARETAKERS TO UTILIZE
0009 MEDICAL, EDUCATIONAL, SOCIAL AND OTHER SERVICES NECESSARY
0010 FOR MAINTAINING THE CHILD'S PHYSICAL, PSYCHOLOGICAL AND/OR
0011 DEVELOPMENTAL HEALTH.
0012
0013
0014
0015
<....+....1....+....2... LINES: 015 ....4....+....5....+....6>
JUMP: ____ SCROLL: ____ SCAN: _____
PF2=CAL,PF3=EXIT, PF7=PREV,PF8=NEXT,PF11=SPELL
+----------
4BU Aa B1—SESSION1 R 20 C 10 10:28 5/09/95

Exhibit 21 – 4 of 12

68

F4 to record Your Update and/or Proceed

SPMNT				PAYMENT SEARCH PROCEDURE		PMNTS1	PMNTM2	
Ac	JV	Ofc Worker	Srvc	Recipient Name	Strt End Date	Amt Auth	Amt Paid	SOF
_		713 44YS28	3210	KEFFELER, DAN	06/01/91 06/07/91		90.44	5
_	*	713 44YS28	3212	KEFFELER, DAN	06/01/91 06/07/91		28.98	5
_	*	713 44YS28	3210	KEFFELER, DAN	06/07/91 06/30/91		310.08	5
_	*	713 44YS28	3212	KEFFELER, DAN	06/07/91 06/30/91		99.36	5
_	*	713 44YS28	3210	KEFFELER, DAN	07/01/91 07/31/91		393.06	5
_	*	713 44YS28	3212	KEFFELER, DAN	07/01/91 07/31/91		126.07	5
_	*	713 44YS28	3210	KEFFELER, DAN	08/01/91 08/31/91		393.06	5
_	*	713 44YS28	3212	KEFFELER, DAN	08/01/91 08/31/91		126.07	5
_	*	713 44CS17	2510	KEFFELER, DAN	08/22/91 08/23/91		161.61	
_	*	713 44YS28	3210	KEFFELER, DAN	09/01/91 09/30/91		396.06	5
_	*	713 44YS28	3212	KEFFELER, DAN	09/01/91 09/30/91		126.07	5
_	*	713 44CS17	3233	KEFFELER, DAN	09/23/91 09/23/91		47.84	5
_	*	713 44YS28	3210	KEFFELER, DAN	10/01/91 10/31/91		393.06	5
_	*	713 44YS28	3212	KEFFELER, DAN	10/01/91 10/31/91		126.07	5
_	*	713 44YS28	3210	KEFFELER, DAN	11/01/91 11/30/91		393.06	5

CMD:_____
Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10—PF11—PF12----------
HELP UPDT PREV NEXT RSTRT TUTOR CANCL
BU Aa B1—SESSION1 R 6 C 3 10:31 5/09/95

Exhibit 21 – 5 of 12

69

SPMNT PAYMENT SEARCH PROCEDURE PMNTS1 PMNTM2

Ac	JV	Ofc	Worker	Srvc	Recipient Name	Strt End Date	Amt Auth	Amt Paid	SOF
_	*	713	44YS28	3212	KEFFELER, DAN	11/01/91 11/30/91		126.07	5
_	*	713	44YS28	3210	KEFFELER, DAN	12/01/91 12/31/91		393.06	5
_	*	713	44YS28	3212	KEFFELER, DAN	12/01/91 12/31/91		126.07	5
_	*	713	44CS17	3219	KEFFELER, DAN	12/08/91 12/09/91		16.25	5
_	*	713	44CS17	3225	KEFFELER, DAN	12/23/91 12/23/91		39.16	5
_	*	713	44YS28	3210	KEFFELER, DAN	01/01/92 01/31/92		393.06	5
_	*	713	44YS28	3212	KEFFELER, DAN	01/01/92 01/31/92		126.07	5
_	*	713	44CS17	3233	KEFFELER, DAN	01/02/92 01/02/92		176.00	5
_	*	713	44YS28	3210	KEFFELER, DAN	02/01/92 02/29/92		393.06	5
_	*	713	44YS28	3212	KEFFELER, DAN	02/01/92 02/29/92		126.07	5
_	*	713	44CS17	3233	KEFFELER, DAN	02/25/92 02/25/92		174.72	5
_	*	713	44YS28	3210	KEFFELER, DAN	03/01/92 03/31/92		393.06	5
_	*	713	44YS28	3212	KEFFELER, DAN	03/01/92 03/31/92		126.07	5
_	*	713	44CS17	3233	KEFFELER, DAN	03/23/92 03/23/92		160.32	5
_	*	713	44YS28	3210	KEFFELER, DAN	04/01/92 04/30/92		393.06	5

CMD:_____

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10—PF11—PF12----------

HELP UPDT PREV NEXT RSTRT TUTOR CANCL

BU Aa B1—SESSION1 R 6 C 3 10:31 5/09/95

Exhibit 21 – 6 of 12

SPMNT PAYMENT SEARCH PROCEDURE PMNTS1 PMNTM2

Ac	JV	Ofc	Worker	Srvc	Recipient Name	Strt End Date	Amt Auth	Amt Paid	SOF
_	*	713	44YS28	3212	KEFFELER, DAN	04/01/92 04/30/92		126.07	5
_	*	713	44YS28	3210	KEFFELER, DAN	05/01/92 05/31/92		393.06	5
_	*	713	44YS28	3212	KEFFELER, DAN	05/01/92 05/31/92		126.07	5
_	*	713	44YS28	3210	KEFFELER, DAN	06/01/92 06/07/92		90.44	5
_	*	713	44YS28	3212	KEFFELER, DAN	06/01/92 06/07/92		28.98	5
_	*	713	44CS17	3233	KEFFELER, DAN	06/03/92 06/03/92		398.47	5
_	*	713	44CS17	3210	KEFFELER, DAN	06/08/92 06/30/92		302.62	5
_	*	713	44CS17	3212	KEFFELER, DAN	06/08/92 06/30/92		97.09	5
_	*	713	44CS17	3210	KEFFELER, DAN	07/01/92 07/31/92		393.06	5
_	*	713	44CS17	3212	KEFFELER, DAN	07/01/92 07/31/92		126.07	5
_	*	713	44CS17	3210	KEFFELER, DAN	08/01/92 08/31/92		393.06	5
_	*	713	44CS17	3212	KEFFELER, DAN	08/01/92 08/31/92		126.07	5
_	*	713	44CS17	3225	KEFFELER, DAN	08/03/92 08/03/92		100.00	5
_	*	713	44CS17	3233	KEFFELER, DAN	08/03/92 08/03/92		475.21	5
_	*	713	44CS17	3210	KEFFELER, DAN	09/01/92 09/30/92		393.06	5

CMD:_____

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10—PF11—PF12----------

HELP UPDT PREV NEXT RSTRT TUTOR CANCL

BU Aa B1—SESSION1 R 6 C 3 10:31 5/09/95

Exhibit 21 – 7 of 12

SPMNT PAYMENT SEARCH PROCEDURE PMNTS1 PMNTM2

Ac	JV	Ofc	Worker	Srvc	Recipient Name	Strt End Date	Amt Auth	Amt Paid	SOF
_		713	44CS17	3212	KEFFELER, DAN	09/01/92 09/30/92		126.07	5
_	*	713	44CS17	3233	KEFFELER, DAN	09/21/92 09/21/92		193.05	5
_	*	713	44CS17	3210	KEFFELER, DAN	10/01/92 10/09/92		116.28	5
_	*	713	44CS17	3212	KEFFELER, DAN	10/01/92 10/09/92		37.26	5
_	*	713	22CS17	3233	KEFFELER, DAN	10/05/92 10/05/92		347.23	5
_	*	713	22CS17	3225	KEFFELER, DAN	10/05/92 10/05/92		60.20	5
_	*	713	22CS17	3210	KEFFELER, DAN	10/09/92 10/31/92	425.09	305.90	5
_	*	713	22CS17	3212	KEFFELER, DAN	10/09/92 10/31/92	136.34	97.98	5
_	*	713	22CS17	3210	KEFFELER, DAN	11/01/92 11/30/92	425.09	404.85	5
_	*	713	22CS17	3212	KEFFELER, DAN	11/01/92 11/30/92	136.34	129.85	5
_	*	713	22CS17	3210	KEFFELER, DAN	12/01/92 12/31/92	425.09	404.85	5
_	*	713	22CS17	3212	KEFFELER, DAN	12/01/92 12/31/92	136.34	129.85	5
_	*	713	22CS17	3210	KEFFELER, DAN	01/01/93 01/31/93	425.09	425.09	5
_	*	713	22CS17	3212	KEFFELER, DAN	01/01/93 01/31/93	136.34	136.34	5
_	*	713	22CS17	3210	KEFFELER, DAN	02/01/93 02/28/93	425.09	425.09	5

CMD:_____

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10—PF11—PF12----------

HELP UPDT PREV NEXT RSTRT TUTOR CANCL

BU Aa B1—SESSION1 R 6 C 3 10:31 5/09/95

Exhibit 21 – 8 of 12

72

SPMNT PAYMENT SEARCH PROCEDURE PMNTS1 PMNTM2

Ac	JV	Ofc	Worker	Srvc	Recipient Name	Strt End Date	Amt Auth	Amt Paid	SOF
_	*	713	22CS17	3212	KEFFELER, DAN	02/01/93 02/28/93	136.34	136.34	5
_	*	713	22CS17	3210	KEFFELER, DAN	03/01/93 03/31/93	425.09	425.09	5
_	*	713	22CS17	3212	KEFFELER, DAN	03/01/93 03/31/93	136.34	136.34	5
_	*	713	22CS17	3210	KEFFELER, DAN	04/01/93 04/30/93	425.09	425.09	5
_	*	713	22CS17	3212	KEFFELER, DAN	04/01/93 04/30/93	136.34	136.34	5
_	*	713	22CS17	3210	KEFFELER, DAN	05/01/93 05/31/93	425.09	425.09	5
_	*	713	22CS17	3212	KEFFELER, DAN	05/01/93 05/31/93	136.34	136.34	5
_	*	713	22CS17	3210	KEFFELER, DAN	06/01/93 06/30/93	425.09	425.09	5
_	*	713	22CS17	3212	KEFFELER, DAN	06/01/93 06/30/93	136.34	136.34	5
_	*	713	22CS17	3210	KEFFELER, DAN	07/01/93 07/31/93	425.09	425.09	5
_	*	713	22CS17	3212	KEFFELER, DAN	07/01/93 07/31/93	136.34	136.34	5
_	*	713	22CS17	3233	KEFFELER, DAN	07/13/93 07/13/93	763.00	763.00	5
_	*	713	22CS17	3210	KEFFELER, DAN	08/01/93 08/31/93	425.09	425.09	5
_	*	713	22CS17	3212	KEFFELER, DAN	08/01/93 08/31/93	136.34	136.34	5
_	*	713	22CS17	3210	KEFFELER, DAN	09/01/93 09/30/93	425.09	425.09	5

CMD:_____

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10—PF11—PF12----------

HELP UPDT PREV NEXT RSTRT TUTOR CANCL

BU Aa B1—SESSION1 R 6 C 3 10:31 5/09/95

Exhibit 21 – 9 of 12

73

SPMNT PAYMENT SEARCH PROCEDURE PMNTS1 PMNTM2

Ac	JV	Ofc	Worker	Srvc	Recipient Name	Strt End Date	Amt Auth	Amt Paid	SOF
_	*	713	22CS17	3212	KEFFELER, DAN	09/01/93 09/30/93	136.34	136.34	5
_	*	713	22CS17	3210	KEFFELER, DAN	10/01/93 10/31/93	425.09	425.09	5
_	*	713	22CS17	3212	KEFFELER, DAN	10/01/93 10/31/93	136.34	136.34	5
_	*	713	22CS17	3219	KEFFELER, DAN	10/01/93 10/31/93	180.00	108.00	5
_	*	713	22CS17	3210	KEFFELER, DAN	11/01/93 11/30/93	425.09	425.09	5
_	*	713	22CS17	3212	KEFFELER, DAN	11/01/93 11/30/93	136.34	136.34	5
_	*	713	22CS17	3219	KEFFELER, DAN	11/01/93 11/30/93	180.00	54.00	5
_	*	713	22CS17	3210	KEFFELER, DAN	12/01/93 12/31/93	425.09	425.09	5
_	*	713	22CS17	3212	KEFFELER, DAN	12/01/93 12/31/93	136.34	136.34	5
_	*	713	22CS17	3210	KEFFELER, DAN	01/01/94 01/31/94	425.09	425.09	5
_	*	713	22CS17	3212	KEFFELER, DAN	01/01/94 01/31/94	136.34	136.34	5
_	*	713	22CS17	3210	KEFFELER, DAN	02/01/94 02/28/94	425.09	425.09	5
_	*	713	22CS17	3212	KEFFELER, DAN	02/01/94 02/28/94	136.34	136.34	5
_	*	713	22CS17	3233	KEFFELER, DAN	02/25/94 02/25/94	180.00	180.00	5
_	*	713	22CS17	3210	KEFFELER, DAN	03/01/94 03/31/94	425.09	425.09	5

CMD:_____

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10—PF11—PF12----------

HELP UPDT PREV NEXT RSTRT TUTOR CANCL

BU Aa B1—SESSION1 R 6 C 3 10:31 5/09/95

Exhibit 21 – 10 of 12

SPMNT PAYMENT SEARCH PROCEDURE PMNTS1 PMNTM2

Ac	JV	Ofc	Worker	Srvc	Recipient Name	Strt End Date	Amt Auth	Amt Paid	SOF
_	*	713	22CS17	3212	KEFFELER, DAN	03/01/94 03/31/94	136.34	136.34	5
_	*	713	22CS17	3210	KEFFELER, DAN	04/01/94 04/30/94	425.09	425.09	5
_	*	713	22CS17	3212	KEFFELER, DAN	04/01/94 04/30/94	136.34	136.34	5
_	*	713	22CS17	3233	KEFFELER, DAN	04/05/94 04/05/94	380.00	380.00	5
_	*	713	22CS17	3210	KEFFELER, DAN	05/01/94 05/31/94	425.09	425.09	5
_	*	713	22CS17	3212	KEFFELER, DAN	05/01/94 05/31/94	136.34	136.34	5
_	*	713	22CS17	3210	KEFFELER, DAN	06/01/94 06/30/94	425.09	425.09	5
_	*	713	22CS17	3212	KEFFELER, DAN	06/01/94 06/30/94	136.34	136.34	5
_	*	713	22CS17	3233	KEFFELER, DAN	06/10/94 06/10/94	85.00	85.00	5
_	*	713	22CS17	3210	KEFFELER, DAN	07/01/94 07/10/94	425.09	139.70	5
_	*	713	22CS17	3212	KEFFELER, DAN	07/01/94 07/10/94	136.34	44.80	5
_	*	713	22CS17	3210	KEFFELER, DAN	07/11/94 07/30/94	425.09	279.40	5
_	*	713	22CS17	3210	KEFFELER, DAN	08/01/94 08/31/94	425.09	425.09	5
_	*	713	22CS17	3210	KEFFELER, DAN	09/01/94 09/30/94	425.09	425.09	5
_	*	713	22CS17	3210	KEFFELER, DAN	10/01/94 10/31/94	425.09	425.09	5

CMD:_____

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10—PF11—PF12----------

HELP UPDT PREV NEXT RSTRT TUTOR CANCL

BU Aa B1—SESSION1 R 6 C 3 10:31 5/09/95

Exhibit 21 – 11 of 12

Exhibit 21 – 12 of 12

SPMNT PAYMENT SEARCH PROCEDURE PMNTS1 PMNTM2

Ac	JV	Ofc	Worker	Srvc	Recipient Name	Strt	End	Date	Amt Auth	Amt Paid	SOF
	*	713	22CS17	3210	KEFFELER, DAN	11/01/94	11/30/94		425.09	425.09	5
–	*	713	22CS17	3210	KEFFELER, DAN	12/01/94	12/31/94		425.09	425.09	5
–	*	713	22CS17	3210	KEFFELER, DAN	01/01/95	01/31/95		425.09	425.09	5
–	*	713	22CS17	3210	KEFFELER, DAN	02/01/95	02/28/95		425.09	425.09	5
–	*	713	22CS17	3210	KEFFELER, DAN	03/01/95	03/31/95		425.09	425.09	5
–					Payment Records: 110				Paid:	27833.05	
Offc: 713					Payment Records: 110				Paid:	27833.05	
Regn: 1					Payment Records: 110				Paid:	27833.05	
Prsn: 531139											

CMD:_____

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10—PF11—PF12

HELP UPDT PREV NEXT RSTRT TUTOR CANCL

BU Aa B1—SESSION1 R 6 C 3 10:31 5/09/95

Exhibit 24 – 1 of 9

NOTICE TO PROCESSING CENTER:
FURTHER ACTION NECESSARY

SOCIAL SECURITY ADMINISTRATION
OFFICE OF HEARINGS AND APPEALS

DECISION

In the case of	Claim for Survivor's Benefits
Daniel Mark Keffeler, Claimant	Social Security Numbers Wage earner: 538-58-5094 Claimant: 535-92-6777
Mary Lou Pierce, Wage earner	

JURISDICTIONAL AND MATERIAL FACTS

On September 28, 1990, Mary Lou Pierce died. She was survived by her children, one of whom is Daniel Mark Keffeler (claimant). The claimant was born on July 24, 1978. The claimant qualified for child's benefits on his mother's Social Security account and a representative payee had to be appointed for the claimant. The Social Security Administration (Administration) appointed Wanda Pierce, the claimant's grandmother, to serve as representative payee.

On April 20, 1991, the Administration determined that Wanda Pierce should be removed, that a new representative payee should be appointed and that the State of Washington Department of Social and Health Services (DSHS) Trust Fund Unit should be

the representative payee.[1] (Exhibit 4 at page 1.) On April 26, 1991, Rodney M. Reinbold, acting as the attorney for Wanda Pierce, objected to the action. (Exhibit 5.) This objection by Wanda Pierce was considered a request for reconsideration. On July 17, 1991, the Administration issued a reconsideration determination, advising Mr. Reinbold of the effect of its intended action, i.e., to change the claimant's representative payee. On September 5, 1991, Wanda Pierce filed a *Request for Hearing*. A hearing was held on October 19, 1992. In the process of reviewing an appeal from the decision, the tape recording of the hearing (the official record of the hearing) was certified as lost. The case has been remanded for a *de novo* hearing and a decision. (See exhibit 28.)

Before scheduling a hearing, actions were taken to identify the appropriate parties and participants to the matter, to identify the issues, and to establish what material facts were in dispute. (See exhibits 26 through 34.) The result of these actions led to an *ORDER* which identified the facts that were not in dispute, the issues, the parties, and those who would be permitted to participate. (See exhibits 28 and 33.) The *ORDER* is incorporated by reference in this decision. The actions also showed that there was no additional evidence relevant to a decision and, therefore, no legal necessity for a formal hearing to take testimony. The parties and participants were given an opportunity to present arguments and

1. See 20 C.F.R. 404.902(p), re action that constitutes an initial determination.

specific points and authorities relevant to the issues. (Exhibit 34.) Nothing has been received. The case is being decided upon the record and without a hearing.

ISSUES

The general issues to be determined are whether the Administration correctly removed the claimant's representative payee, Wanda B. Pierce, and, if so, whether DSHS Trust Fund Unit was properly appointed the claimant's representative payee.

As to the issue of removal of Wanda B. Pierce, the Administration determined that Wanda B. Pierce should be removed because she was not spending any of the claimant's monthly benefits for the current care of the claimant, rather saving it for future use for the claimant or delivery to the claimant. This presents the issue provided by 20 C.F.R. 404.2050:

> " . . . . We will select a new payee if we find . . . the present payee - -
>
> (a) Has not used the benefit payments on the beneficiary's behalf in accordance with the guidelines in this subpart; . . .."

The guidelines in the designated subpart are stated in 20 C.F.R. 404.2040. The language of section 404.2040 which appears relevant is as follows:

> "(a) *Current maintenance.* (1) We will consider that payments we certify to a representative payee have been used for the use and benefit of the beneficiary if they are used for the beneficiary's current maintenance. Current maintenance includes cost incurred in

obtaining food, shelter, clothing, medical care, and personal comfort items. . . .

(d) *Claims of creditors.* A payee may not be required to use benefit payments to satisfy a debt of the beneficiary, if the debt arose prior to the first month for which payments are certified to a payee. If the debt arose prior to the time, a payee may satisfy it only if the current reasonably foreseeable needs of the beneficiary are met."

EVALUATION

The appointment of the claimant's grandmother, Wanda Pierce, as representative payee, is not a determination which can be altered or set aside in an arbitrary or capricious manner. Removal is subject to and performed under standards established by law. In this case, the standard is provided by 20 C.F.R. 404.2050, which would require a finding that Wanda Pierce has not used the benefits in accordance with the guidelines in section 404.2040.

Spending for the claimant's current maintenance is within the guidelines. The claimant's current maintenance includes food, shelter, clothing, medical care, and personal comfort items. Other items can reasonably be inferred to be within the guidelines, including reasonable spending on education and training.[2] So long as the current needs of the

2. Accord, 11th ed., *Social Security Handbook 1993*, pages 267 and 268: "1616 A REPRESENTATIVE PAYEE must apply payments for the use and benefit of the entitled individual. Social Security benefits are properly disbursed if they are: A. Spent for the beneficiary's current and reasonably foreseeable needs; or B. Saved and invested for the beneficiary, if current needs are being met. . . . 1617 CURRENT NEEDS ARE THE IMMEDIATE AND REASONABLY FORESEEABLE ESSENTIALS FOR LIVING such as shelter, food, clothing, utilities, medical care and insurance, dental care, personal hygiene, education and rehabilitation expenses of the disabled.

claimant are being met, the law does not require a spending upon support and maintenance.

> For example, the regulations do not require that a father or mother, when acting as representative payee for their child, spend the child's benefits on support and maintenance when they are willing and able to do so, even if their child is entitled to benefits due to the death of a step-parent.

In this case, Wanda Pierce has submitted an affidavit which shows that of $6,369.39 received, she has spent $3,531.00 to provide the claimant with clothing, transportation, educational opportunities, and personal comfort or pleasure. (Exhibit 31.) Though some detailed explanation might be warranted in a formal accounting,[3] there is no express allegation or argument presented, and there is nothing on the face of the expenditure record to

3. The statement of deposits and expenses, and the references to the claimant's proceeds from insurance do not show that she kept the claimant's earned income or other income or assets separate from his Social Security income, a matter that could be of importance because of the protection afforded to the claimant's Social Security income. See section 207 of the Social Security Act (42 U.S.C. section 407).

Exhibit 24 – 6 of 9

show that it was not within the guidelines of 20 C.F.R. 404.2040, e.g., spent for clothing, education, or personal comfort.

Wanda Pierce did not spend any of the claimant's benefits by payments to DSHS Trust Fund Unit toward deferring the cost of foster care for the claimant. The guidelines can be found to require spending if the claimant has current maintenance needs that are not otherwise met or if the claimant is indebted for his current maintenance (cost incurred in obtaining food, shelter, clothing, medical care, and personal comfort items) and the representative payee is presented with a claim. There is no evidence that the claimant's current maintenance needs are not being met, that the claimant has been indebted for maintenance to DSHS Trust Fund Unit (or to anyone else) or that any claim has been presented to Wanda Pierce.

Finding: The expenditures made by Wanda Pierce, totaling $3,531.00, are not show to have been spent in violation of the guidelines of 20 C:F.F. 404.2040.

Finding: The record provides no evidence that Wanda Pierce, as representative payee, has failed to pay any just debt of the claimant or failed to spend money upon the claimant's support and maintenance when such was necessary.

Finding: There is no substantial evidence that Wanda Pierce has failed to use the claimant's Social Security benefits in accordance with the guidelines in section 404.2040.

Exhibit 24 –7 of 9

Legal grounds for removal of Wanda Pierce as the representative payee have not been established. Though not in issue, some matters have been considered and are deserving of mention:

> Consideration has been given to the whether a reasonable interpretation of section 404.2040 would warrant removal of any representative payee if the only reason and purpose was to enable the DSHS Trust Fund Unit to be appointed. Granting that the DSHS Trust Fund Unit has a special status and responsibility for the claimant's care, no legal authority can be found to support such an interpretation.
>
> Consideration has been given to the position of the DSHS Trust Fund Unit. It undertook foster care of the claimant before his mother died and continues to have the expense of his foster care. If this expense establishes a just legal claim upon the claimant under 20 C.F.R. 404.2040(d), then the claim can be presented to the representative payee for appropriate action. (See also SSR 66-20 at pages 83 and 84 directing payment of customary charges for which the estate of the beneficiary would be liable to pay.) If it does not amount to a claim, then the policy of the State of Washington is not being frustrated in this case and payment of such expense may not be proper. (See also SSR 66-20 at pages 83 and 84 re ruling as to current 20 C.F.R. 404.2040(b) [former 20 C.F.R. 404.1606] and the authority of a

Exhibit 24 – 8 of 9

representative payee to pay or withhold payment to cover care and maintenance in a hospital. See 20 C.F.R. 404.2040(a)(2) re express exception for AFDC. NOTE: The propriety of payments to DSHS Trust Fund Unit made in the past is not at issue at this time.)

Consideration has been given to the fact that, when appointing a representative payee, the Administration may decide to give favored treatment toward appointing a state agency when that agency is providing the maintenance for a beneficiary. This case can be distinguished because such a policy is not a basis for removing another representative payee who is performing as required by law and is following the established guidelines.[4]

Because grounds for removal of Wanda Pierce as representative payee have not been established, the issue of replacement and the appointment of the DSHS Trust Fund Unit are moot.

---

4. There may be other distinguishing features not at issue. For example, unlike a case where State care begins due to the death of the wage earner, care of the claimant began before the wage earner's death. If the State of Washington was not entitled to recover cost of care from the claimant's mother before her death, it does not seem appropriate to establish an unwritten policy that would have the affect of requiring her to make payment (she earned the Social Security benefits which the State would use for her son's maintenance) after her death.

Exhibit 24 –9 of 9

DECISION

There is no legal basis for removing Wanda Pierce as the representative payee of Daniel Mark Keffeler and Wanda Pierce shall continue to serve as the representative payee of Daniel Mark Keffeler.

Date: JUNE 21, 1995

/s/
Lloyd Tunik
Administrative Law Judge

(K53858DM)

Exhibit 26 – Page 1 of 8

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE COUNTY OF OKANOGAN

IN RE THE GUARDIANSHIP OF: DAN MARK KEFFELER,	No. 90-4-00088-4 MOTION FOR ORDER TO SHOW CAUSE

COMES NOW the State of Washington, Department of Social and Health Services (DSHS), by and through Christine O. Gregoire, Attorney General, and David W. Coe, Assistant Attorney General, and moves this court for an order requiring the limited guardian, Wanda B. Pierce, to appear before this court to show cause:

(1) Why the limited guardianship should not be modified so as to require the guardian to assign her rights as payee for any benefits received on behalf of Dan M. Keffeler from the Social Security and/or Supplemental Security Income programs to DSHS, the current legal custodian of Dan M. Keffeler, until he reaches 18 years of age;

(2) Why the limited guardian of the estate, Wanda B. Pierce, should not be required to transfer all benefit payments previously received from the Social Security and/or Supplemental Security Income Programs for Dan M. Keffeler from April 1, 1993, to date, currently held in trust; or

Exhibit 26 – Page 2 of 8

(3) In the alternative, why she should not be removed as limited guardian, and replaced by DSHS or another suitable person as substitute limited guardian.

GROUNDS

Dan M. Keffeler has been placed in foster care since July 30, 1990. The State of Washington has paid for Dan's foster care since that time, and will continue to pay for his care until he reaches age 18, on July 24, 1996. As limited guardian, Wanda Pierce is the designated payee for Social Security Administration benefits paid monthly for the care of Dan M. Keffeler. The limited guardian has received social security benefits since April of 1993. She refuses to assign the right to receive these benefits to the state or reimburse the state for the care of Dan M. Keffeler.

BASIS

This motion is based upon RCW 11.88.120, RCW 11.88.140(3), RCW 11.92.035, and the Declaration of David W. Coe, filed concurrently with this motion.

DATED THIS 9th day of FEBRUARY, 1994.

CHRISTINE O. GREGOIRE
Attorney General

By //s//
DAVID W. COE, WSBA #18636
Assistant Attorney General

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE COUNTY OF OKANOGAN

IN RE THE GUARDIANSHIP OF: DAN MARK KEFFELER,	No. 90-4-00088-4 DECLARATION OF DAVID W. COE IN SUPPORT OF SHOW CAUSE ORDER

DAVID W. COE declares as follows:

I am an Assistant Attorney General for the State of Washington, and am assigned to the Wenatchee Regional Services Office. I represent the Department of Social and Health Services (DSHS) in Okanogan County Juvenile Court, and am involved in the dependency of Dan M. Keffeler, Okanogan County Juvenile Court Cause No. 91-7-00006-9. In September of 1993, I was contacted by Michael R. Hobbs, a DSHS program manager in the Federal Revenue Unit for the Division of Children and Family Services, concerning reimbursement for foster care expenditures related to the dependency. I subsequently contacted Mr. Rodney Reinbold, attorney for limited guardian, Wanda Pierce, concerning the possibility of an assignment of social security benefits received on behalf of Dan Keffeler, and reimbursement for foster care from social security benefits previously received and held in trust.

Dan M. Keffeler has been in foster care funded by the State of Washington since July 30, 1990. A

dependency petition was filed in Okanogan County Juvenile Court, and Dan was subsequently found to be a dependent child under RCW 13.34.030 on February 6, 1991. The Division of Children and Family Services, Department of Social and Health services, has been the legal custodian of Dan since that date. The permanent plan of care proved by juvenile court is continued foster care placement until Dan turns 18 on July 24, 1996.

In the context of the dependency proceeding, there has been no involvement by Dan's father, Dan Keffeler, who presently has little or no contact with Dan. Dan's mother, Mary Lou Pierce, is deceased, and Dan receives monthly social security benefits as one of her surviving children. Wanda Pierce has never acted as a placement resource for Dan since the outset of the dependency, nor does she have any plans to do so, according to her attorney. Dan is doing well in the current licensed foster home, and wishes to remain in that placement.

According to information received from Mr. Hobbs, Washington State taxpayers are expending $560.00 per month for foster care for Dan Keffeler. The Department of Social and Health Services (DSHS) had been designated the payee for social security benefits paid on behalf of Dan Keffeler, and had applied them to offset the cost of the foster care. Wanda Pierce, as limited guardian of the estate of Dan Keffeler, obtained designation as payee for those benefits beginning in April of 1993.

It is generally recognized that social security benefits received by a worker's children are designed to provide for the children's support. *Pessein v. Pessein*, 68 Wash. App. 893, 895 (1993). The social security benefits received in trust by Wanda Pierce as limited guardian should be reassigned to DSHS. As Dan's legal custodian, DSHS provides for all of the day-to-day expenses involved in his care.

Ms. Pierce, through her attorney, has refused to assign the social security benefits for Dan to DSHS. Her attorney has further stated that Ms. Pierce is accumulating these funds to provide for Dan's future use.

Social security benefits received by a child are designed to substitute for the income earned by a parent who is no longer able to work by virtue of death or disability. The State of Washington is entitled to reimbursement for all foster care payments extended on behalf of a child, especially when there are funds presently available for that express purpose. For these reasons, DSHS requests the relief as set out in the show cause motion.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

DATED THIS 9th day of FEBRUARY, 1994, at Wenatchee, Washington.

//s//
DAVID W. COE, WSBA #18636
Assistant Attorney General

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE COUNTY OF OKANOGAN

IN RE DAN MARK KEFFELER,	No. 90-4-00088-4 ORDER TO SHOW CAUSE

THIS MATTER having come before the undersigned Judge of the above-entitled court on the motion of the State of Washington, Department of Social and Health Services and the court being fully advised in the premises, NOW THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Wanda B. Pierce, the guardian of the estate of Dan Mark Keffeler, shall appear at the Okanogan Superior Court, 149 Third, North, Okanogan, Washington 98840, on February 22, 1994, at 9:30 a.m. and then and there show cause why the guardianship should not be modified, or in the alternative, why she should not be removed as limited guardian, as alleged in the accompanying motion.

IF YOU FAIL TO APPEAR IN PERSON OR BY AN ATTORNEY AND ANSWER THE MOTION, THE RELEIF AS DESCRIBED IN THE MOTION MAY BE GRANTED.

DATED THIS 10 day of Feb, 1994

//s//Jack Burchard
JUDGE/COURT COMMISSIONER

Presented by:
CHRISTINE O. GREGOIRE
Attorney General
By //s//
DAVID W. COE, WSBA# 18636
Assistant Attorney General

Exhibit 26 – Page 7 of 8

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE COUNTY OF OKANOGAN

IN RE THE GUARDIANSHIP OF:	No. 90-4-00088-4
DAN MARK KEFFELER,	NOTICE OF CLAIM

This claim is filed pursuant to RCW 11.92.035.

1. The claimant is: State of Washington, Department of Social and Health Services, Division of Child & Family Services, Financial Resource Unit, P.O. Box 45710, Olympia, WA 98507-5710.

2. The claim is filed by: David W. Coe, Assistant Attorney General, Office of the Attorney General, 18 S. Mission, 3rd Floor, Wenatchee, WA 98801, as attorney for the claimant.

3. The claimant is based upon the orders of dependency and disposition entered on February 6, 1991, in Okanogan County Juvenile Court under cause number 91-7-00006-9 which designated Dan Keffeler as dependent child, and established DSHS as the legal custodian of the child in foster care. DSHS status as legal custodian or Dan Keffeler, and his continued placement in foster care funded by DSHS, was recently reaffirmed in the review order entered February 2, 1994, a copy of which is attached as Exhibit A to this notice.

Exhibit 26 – Page 8 of 8

4. The amount of the claim is approximately $6,120.00, and represents the total amount of monthly foster care expenditures from April, 1993 to date.

5. The claim is presently due.

Submitted this 9th day of FEBRUARY, 1994.

CHRISTINE O. GREGOIRE
Attorney General

By //s//
DAVID W. COE, WSBA #18636
Assistant Attorney General

SUPERIOR COURT OF WASHINGTON
FOR OKANOGAN COUNTY

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, GUARDIAN, AND OTHER PERSONS SIMILARLY SITUATED, Plaintiff, vs. STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES AND DEPARTMENT OF LICENSING, Defendant.	No. 96-2-00157-2 AFFIDAVIT OF RICHARD J. ANDERSON

STATE OF WASHINGTON)
ss.:
COUNTY OF THURSTON)

Richard J. Anderson, being first duly sworn, states:

I am the Office Chief for the Office of Federal Funding in the Division of Program and Policy for the

Children's Administration in the Department of Social and Health Services (Department). Part of my responsibility is to oversee participation in federal programs that provide financing for services which the Children's Administration provides to the public. Primarily, these federal funds are used when children are placed in foster care by the Division of Children and Family Services (DCFS), also part of the Children's Administration.

It is the policy of DCFS to apply to the Social Security Administration (SSA) to be the Representative Payee for social security monies whenever a child is placed in foster care. If SSA chooses to make DCFS the Representative Payee, the actual checks are sent to the Department's Office of Financial Recovery and the money is then transferred to a suspense account in the Department's Office of Accounting Services. This money is used to reimburse the Department for monthly foster care expenses, including food, clothing, shelter and other personal or medical expenses as governed by the Code of Federal Regulations. Excess money is placed in trust accounts which bear interest and the interest is reported to SSA.

No fee is ever charged by DCFS for acting as Representative Payee or for managing these accounts. Balances are given to foster children when they emancipate at age 18 unless the child stays in foster care past the age of 18 to finish high school.

DCFS does not act as Protective Payee for foster children. At no time, from July 30, 1990 to the present, has DCFS ever be a Protective Payee for Danny Keffeler.

There are approximately 7,000 children in foster care. During the month of January 1997, the Trust Fund Unit of the Office of Accounting Services received payments for 1763 clients. The breakdown of these payments by number of children and source of money is as follows: The Department is Representative Payee for the Title XVI Social Security Insurance (SSI) payments for 1261 children; the Department is Representative Payee for Title II Social Security Payments for 370 children; the Department is Representative Payee for 123 children who are receiving both SSA and SSI; one Child is eligible for SSI/SSA and a Veterans Administration benefit; one child is eligible for Railroad Retirement payments; one child is eligible for a Federal Pension payment from a parent; one child receives Crime Victim Compensation from the Department of Labor and Industries (L&I); another child is receiving SSA and L&I; one child gets SSA and a payment from an insurance company; two children are receiving restitution from a biological parent.

Danny Keffeler was placed in foster care by his mother on July 30, 1990 under a Voluntary Placement Agreement. This agreement authorized DCFS to apply to be the Representative Payee for any benefits the child is eligible to receive and to use those funds to cover the cost of care.

The Department applied to SSA to become Representative Payee for Danny Keffeler after Danny became a dependent of the state in February 1991. In April 1991, SSA designated the Department as Representative Payee. The Department acted as Representative Payee for Danny and received money

for SSA from July 1991 to March 1993. After March 1993, the Department was no longer Danny's Representative Payee. As Danny's Representative Payee, the Department received $5,780.00 from SSA. The Department used all these monies to cover the cost of care for Danny.

Danny still resides in a DCFS foster home even though he is 18 because he has not completed high school. On July 24, 1996, Danny signed a Voluntary Placement Agreement that authorizes DCFS to apply to be his Representative Payee and to use those funds to cover the cost of care and services. However, the Department has not applied to become Danny's Representative Payee again.

The parents of foster children have child support assessed against them to help pay for the cost of foster care. The Department then will assume the rest of the responsibility for costs of care. If a child is entitled to Title II benefits, then the parent's child support obligation is reduced by the amount of Title II benefits received.

The Department has expended more than $43,000 for Danny's care.

//s//

_____

Richard J. Anderson

SUBSCRIBED AND SWORN to before me this 5 day of March, 1997.

//s//

_____

Notary Public and for Washington.
My Commission expires: Aug 30, 2000.

SUPERIOR COURT OF WASHINGTON
OKANOGAN COUNTY

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, GUARDIAN, AND OTHER PERSONS SIMILARLY SITUATED, Plaintiff, vs. STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES AND DEPARTMENT OF LICENSING, Defendant.	No. 96-2-00157-2 AFFIDAVIT OF RICHARD J. ANDERSON

STATE OF WASHINGTON)
: ss.
COUNTY OF THURSTON)

Richard J. Anderson, being first duly sworn, states:

My name is Richard J. Anderson. I am the Office Chief for the Office of Federal Funding in the Division of Program and Policy for the Children's

Administration (CA) in the Department of Social and Health Services (DSHS). Part of my responsibility is to oversee the administration's participation in federal programs that provide financing for the services that CA provides to the public. These federal funds are used when children are voluntarily placed in foster care or when a court determines a child to be dependent and is then placed in foster care by the Division of Children and Family Services (DCFS, also part of the Children's Administration).

It is the policy of DCFS to apply to the Social Security Administration to become the representative payee whenever a child is placed in foster care. It is also DCFS's policy that DCFS will make application for social security benefits whenever they have knowledge that a child's birth or adoptive parent is either deceased, disabled or retired.

In October 1989, Daniel Keffeler was voluntarily placed in foster care by his mother. After his mother died, Daniel began receiving social security monies under Title II of the Social Security Act.

When Wanda Pierce, the guardian of Daniel's estate, was designated by the Social Security Administration as representative payee and was receiving Daniel's social security monies, she did not remit any of this money to the Department to pay for Daniel's cost of care, including food, housing, and clothing.

Daniel's circumstances are unique. Daniel's case is the only instance since 1991 that I am aware of in which a child in foster care has had a guardian of the estate. In addition, the Department took unusual

action when it was removed as Daniel's representative payee in March 1993; at that time, the Administration appointed the guardian, Wanda Pierce, as representative payee.

In February 1994, the Department petitioned the court for an Order to Show Cause why the guardian was not remitting Daniel's social security monies to the Department for the costs of Daniel's care. This action by the Department is in no way common place nor is it indicative of the Department's policy towards private representative payees. The Department does not have a policy to petition the court for an explanation of why the guardian is not remitting social security monies to the Department. In addition, the Department does not pursue another representative payee for a child's past social security benefits.

The Department did not pursue this matter in superior court after this time because the Department was confident that this matter would be taken care of within the Social Security Administration.

After the Office of Appeals Council issued its decision in June 1995, the Department did not pursue action with the Social Security Administration to become representative payee because Daniel would soon be turning 18 years old.

If a circumstance occurs where the Department is not designated representative payee by the Social Security Administration for a child in foster care, the Department would not pursue any legal action to force the private representative payee to remit the social

security monies received to the Department for the cost of the child's care.

The Department has offered to return those social security benefits that were received for Daniel because of the existence of the order that appointed the guardian, even though DSHS was never served a certified copy of the order as required by RCW 74.13.060(5).

//s//

Richard J. Anderson

SUBSCRIBED AND SWORN to before me this 24th day of July, 1997.

//s//

Notary Public and for Washington.
My Commission expires: 9/19/2000.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF OKANOGAN

IN RE: GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, GUARDIAN, AND OTHER PERSONS SIMILARLY SITUATED, Plaintiff, v. STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Defendant.	NO. 96-2-00157-2 AFFIDAVIT OF RICHARD J. ANDERSON

STATE OF WASHINGTON)
: ss.
County of Thurston)

RICHARD J. ANDERSON, being first duly sworn on oath, deposes and says:

My name is Richard J. Anderson. I am the Office Chief for the Office of Federal Funding in the Division of Program and Policy for the Children's Administration (CA) in the Department of Social and Health Services (DSHS). Part of my responsibility is

to oversee the administration's participation in Federal Programs that provide financing for the services that CA provides to the public. These federal funds are used when children are voluntarily placed in foster care or when a court determines a child to be dependent and is then placed in foster care by the Division of Children and Family Services (DCFS, also part of the Children's Administration). Approximately 75% of the children in the custody of DSHS are placed in licensed foster homes or licensed group homes. Most of the other 25% are placed with relatives and foster care is not paid by the State of Washington but rather by the relatives. DSHS does not apply to become the representative payee for these foster children in relative placement.

Federal funds are used to pay for a portion of foster care payments to licensed foster homes and licensed group homes. During 1995-1997 biennium approximately $137.8 million was spent on payments to licensed foster care homes and group homes. Approximately $34.4 million of this total budget, or about 25%, was from federal sources. (One of these federal sources CEAP or Title IV-A emergency assistance is no longer available because of welfare reform, so the current percentage of federal funds is somewhat less than 25%). Of these federal monies, $13.4 million of the federal funds is from the Title IV-E program. Federal policy requires that the state use Title II benefits to credit the state and federal share of foster care payments.

To my knowledge, when Daniel Keffeler was appointed a guardian in December 1990, the

Department did not receive certified copies of the guardianship papers.

//s//

RICHARD J. ANDERSON
SUBSCRIBED AND SWORN TO before me this 17th day of September, 1997.

//s//

NOTARY PUBLIC in and for the State of Washington. My commission expires: 11-19-89

SUPERIOR COURT OF WASHINGTON FOR OKANOGAN COUNTY

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, GUARDIAN, AND OTHER PERSONS SIMILARLY SITUATED, and DANNY KEFFELER, an individual. Plaintiffs, vs. STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES AND DEPARTMENT OF LICENSING, Defendant. and LYLE QUASIM, Director of the Department of Social and Health Services, and MICHAEL R. HOBBS, Program Manager for Social Security Income Department and Social and Health Services Department of Children and Family Services, Additional Defendants.	No. 96-2-00157-2 FIRST AMENDED COMPLAINT

COMES NOW the above named Estate of Danny Keffeler, by and through its Guardian Wanda Pierce, acting through their co-counsel Rodney Reinbold, of REINBOLD and GARDNER, P.O. Box 751, Okanogan, Washington 98840 and Richard B. Price of RICHARD B. PRICE, P.S., INC., P.O. Box 1687, Omak, Washington 98841, on their own behalf and on behalf of all other persons similarly situated, and for cause of action against the Defendant, State of Washington asserts and alleges as follows:

I.

JURISDICTION AND VENUE

1.1 Jurisdiction. Superior Courts are invested with authority to resolve claims for injunctive relief.

1.2 Venue. The Plaintiffs are residents of the County of Okanogan, State of Washington such that venue in the above-entitled Court is proper.

II.

PARTIES

2.1 Plaintiff Representative Guardianship Estate. Daniel Mark Keffeler was born July 24, 1978. His social security number is 535-92-6777. Danny Keffeler's mother was Mary Lou Pierce, who died September 28, 1990 in an automobile accident. Daniel Mark Keffeler was declared a dependent of the State of Washington by the Okanogan County Superior Court on February 6, 1991, Cause No. 91-7-000609. On December 18, 1990 an order was entered appointing Wanda Pierce, who is Danny Keffeler's

grandmother, to be the Guardian of the Estate of Danny Keffeler in Okanogan County Superior Court Cause No. 90-4-00088-4. Wanda Pierce has since served as Danny Keffeler's guardian and brings this action against the State of Washington on his behalf individually and on behalf of all other persons similarly situated.

2.2. Plaintiff Putative Class Members. The members of the Plaintiff Class include all children in the State of Washington receiving social security benefits, whose benefits were or continue to be appropriated by the State to offset expenses for the child's care.

2.3 Defendant State of Washington. The State of Washington Department of Social and Health Services is a Defendant as to the claims hereinafter recited, and subject to the jurisdiction of the above entitled court.

2.4 Defendant Lyle Quasim. Lyle Quasim is the Director of the Department of Social and Health Services for the State of Washington.

2.5 Defendant, Michael R. Hobbs. Michael R. Hobbs is the Program Manager for the Department of Children and Family Services, Social Security Income Division.

III.

PROPERTY OF CLASS ACTION PROSECUTION

3.1 Class Action Prerequisite Compliance – CR 23(a). This is a class action seeking equitable relief, including injunctive relief, and ancillary monetary relief and reimbursement to those putative

class members who have suffered wrongful appropriation of protected Federal monetary benefits set forth above. Accordingly, Plaintiff seeks on behalf of her ward and on behalf of others similarly situated, an (1) injunction enjoining the State of Washington from charging and collecting monies from the Plaintiffs federally protected social security benefits; (2) creation of a fund to reimburse class members for all funds wrongfully collected; (3) and for costs and reasonable attorneys' fees.

3.2 Impracticality of Joining All Members of the Class as Parties Due to the Size of the Class – CR 23(a)(1). The exact number of persons similarly situated to Plaintiffs are now unknown but presumably believed to be in the hundreds or thousands. The exact number of persons may be identified from Defendants' records, and such persons can be identified with particularity through appropriate judicial discovery procedures, such that it would be possible to give such persons and/or entities actual notice of these proceedings if required. The class, as denominated in this Complaint, satisfies Civil Rule 23(a)(1) requiring that the number of putative class members be such that it renders joinder impractical.

3.3 Existence of Questions of Law and Fact to the Class – CR 23(a)(2). There exist questions of law and fact, common to the Plaintiffs' claim and the claims of the putative class members. The factual and legal issues connected with the claims for class relief all relate to the conduct of the Defendant, State of Washington.

3.4 Questions of Law and fact Common to Plaintiffs and All Members of the Putative Class. Questions include, but are not limited to:

A. Whether Defendant's practice of billing and collecting monies from the Plaintiffs federally protected social security benefits to offset costs which the State is required by law to pay violate the Plaintiffs civil rights, constitutional rights, statutory protection and is wrongful of common law;

B. Whether Defendant's acts alleged in this Complaint are the proper subject for injunctive relief.

3.5 Claims of the Representative Parties are Typical of Claims of the Class – CR 23(a)(3). The claims of the representative are similar to all other putative class members in that the Plaintiff has been wrongfully charged and deprived of property in violation of the law the same as or similar to all other putative Plaintiffs. The representatives of the class will continue to be subjected to unlawful charges and deprivation of property without redress.

3.6 Plaintiffs' Action for Class Relief. Plaintiffs' action for class relief does not raise antagonistic interests among putative class members, as all the major issues are common to all class members and all class members have an interest in obtaining the same relief. The obtaining of relief by one class member will not unreasonably detract from or jeopardize other class members' interests.

3.7 Adequate Representative – Civil Rule 23(a)(4). The Plaintiff representative comes before

this Court in the same capacity as any other litigant seeking redress without regard to their race, religion or financial status. The adequacy of Plaintiff's representation depends upon the capacity of their legal counsel to adequately prosecute the case. Plaintiffs' counsel are experienced trial attorneys, one of whom has considerable experience in class action litigation, having successfully prosecuted numerous class action cases. Plaintiffs' counsel have the necessary skills, expertise and competency to adequately represent the Plaintiffs' interest and those of the class. The Plaintiff representative is ready and willing to bring this action in a representative capacity on behalf of and for the protection of the putative class.

3.8 Class Action Maintenance Pursuant to CR 23(b). The Plaintiffs' claims satisfy the conditions of Civil Rule 23 (b) (1), (2) and (3).

A. CR 23 (b) (1) (A) and (B). The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for the Defendant and would also create the risk of adjudication with respect to individual members of the class, which would, as a practical matter, be dispositive of the interests of other parties not parties to the adjudication.

B. CR 23 (b) (2). The Defendant has acted on grounds generally applicable to all putative class members, making final injunctive relief appropriate with respect to the class as a whole. Specifically, the Defendant has acted on grounds

generally applicable to the class by imposing and implementing a uniform policy of charging and collecting monies from minor social security recipients to offset the cots of their care for which the Sate is legally obligated to pay without wrongfully appropriating federally protected benefit payments. Defendant's uniform conduct has and will continue to, unless abated, affect every putative class member alike, thereby making appropriate final mandatory injunctive relief pursuant to Civil Rule 23 (b) (2).

C. CR 23 (b) (3). Alternatively, the resolution of the limited legal and factual questions pertaining to the putative class members predominates over any questions affecting only individual members, such that the prosecution as a class action is superior to other available methods for the fair and efficient adjudication of this controversy. In this regard, there should be little, if any, interest in individual members of the class controlling the prosecution of a separate action for this relief, since the relief sought is to (1) require reimbursement for wrongful appropriation of federally protected social security benefits; and (2) enjoin future wrongful conduct; and (3) eliminate the practice of wrongful charges. This action is a superior method in preventing future economic and pecuniary loss to hundreds and possibly thousands of Washington minor citizens. The class will benefit from redress from the ongoing action, which if left to hundreds of individual actions could greatly congest the Superior Courts of this State. Any difficulties which may be encountered in this action will be slight compared to the impracticality of having several hundred individual members of the putative class bringing

individual actions and thereby unnecessarily burden the courts throughout the State of Washington. This class litigation is a fair, efficient and expeditious vehicle for providing redress to both unnamed and named Plaint9iffs and to as yet unidentified class members. This action is superior to any other available method for the fair and efficient adjudication of the controversy. The conditions of Civil Rules 23 (b) (3) are satisfied.

IV.
CLAIM AGAINST STATE OF WASHINGTON GRAVAMEN OF PLAINTIFFS COMPLAINT

4.1 Danny Keffeler's Mother, Mary Lou Pierce, was killed in an automobile accident on September 28, 1990. She was survived by her son Danny Keffeler who qualified for child's benefits pursuant to Mary Lou Pierce's social security account. This benefit was an earned benefit and not a benefit under the Social Security Insurance program.

4.2 The Social Security Administration appointed Danny Keffeler's grandmother, Wanda Pierce, who was serving as guardian of his estate as representative payee, to receive and disburse his social security check.

4.3 Following the death of Mary Lou Pierce, Danny Keffeler was placed in foster care, which care was financed by the Washington State Department of Social and Health Services.

4.4 Pursuant to a uniform policy adopted and employed by the State of Washington, which policy is applied to all foster care children who receive social

security benefits under like circumstances, the State of Washington applied to the Social Security Administration to become the protective payee for Danny Keffeler.

4.5 On April 20, 1991 the Social Security Administration made a determination to appoint the State of Washington Department of Social and Health Services (DSHS) Trust Fund Unit to become the representative payee for Danny Keffeler.

4.6 As a result of the State's being appointed, it commenced receiving Danny Keffeler's social security benefit payments and paid the benefit to the State of Washington as remuneration for providing foster care.

4.7 From August 20, 1991 until July 16, 1993 the State of Washington did not remit any money whatever to Danny Keffeler, and, instead, paid his social security benefits to itself, pursuant to its uniform policy, to mitigate the cost of the foster care it was legally required to provide.

4.8 As a result of the State's action and uniform policy, Plaintiff was wrongfully deprived of federal benefits protected by law, 42 USC 407, from appropriation by the State or otherwise, in violation of the U.S. Constitution, Article 6. This deprivation was imposed upon his estate by the State of Washington which was recklessly indifferent to the law.

4.9 On April 26, 1991, Rodney M. Reinbold, acting as the attorney for Wanda Pierce, Guardian for the Danny Keffeler Estate, objected to the State's unauthorized payments to itself. This objection

ripened into an appeal to the Social Security Administration Office of Hearings and Appeals.

4.10 On July 16, 1993 Administrative Law Judge John R. Hood reinstated Wanda Pierce as the representative payee for said Plaintiff.

4.11 The State of Washington has pursued and continues to pursue a relentless campaign to obtain Danny Keffeler's social security benefits in violation of the federal law protecting said benefits.

4.12 In pursuit of the State's wrongful campaign, the State of Washington:

A. Filed a motion for order to show cause in Okanogan County Superior Court Cause No. 90-4-00088-4 seeking:

(1) To remove Wanda Pierce as Danny Keffeler's guardian because she refused to turn over Danny Keffeler's protected social security benefits to the State of Washington; and

(2) For an order requiring the Guardian to give over Danny Keffeler's social security payments to its Trust Unit; and

(3) That the State's Trust Unit be substituted as Guardian for Danny Keffeler so that the money could be appropriated by the State of Washington.

B. Improperly filed a claim in the Danny Keffeler estate for the purpose of requiring the Estate to pay for Danny Keffeler's support from his social security benefits, in direct derogation of the Federal Law as codified in 42 USC 407 and as interpreted by the United States Supreme Court in

Philpott v. Essex County Board, 409 US 413, 34 L. Ed. 2d 608, 93 S. Ct. 590 (1972); *Bennett vs. Arkansas*, 485 US 395, 99 L. Ed. 2d 455, 108 S Ct 1204 (1988); *Brinkman vs. Rahm*, 878 F.2d 263 (1989).

C. At some time before March 12, 1994 the State filed a further application to become the protective payee for Danny Keffeler, which application was granted on March 12, 1994. After that date no further money was received by Danny Keffeler from his mother's social security benefits until after his further successful appeal.

D. Without notice to the Guardian, or her attorney, or to any other person, the State of Washington filed a Notice of Appeal to the Appeals Council, Office of Hearings and Appeals in Falls Church, Virginia, which ex parte action resulted in a remand of the entire social security case back to the Office of Hearings and Appeals in Spokane, Washington.

E. On remand Administrative Law Judge Lloyd Tunik, again determined that Danny Keffeler's grandmother should be the protective payee for Danny Keffeler.

F. As part of the remand hearing Danny Keffeler's attorney was authorized to charge $5,490 in connection with this end run attempt by the State legal proceedings.

G. The State of Washington then appealed Judge Tunik's decision to the Appeals Council in Arlington, Virginia but advises that its appeal has now been abandoned.

V.

CAUSES OF ACTION

5.1 The State of Washington, acting under color of State law, through its policy recited above, has and continues to act irrationally, invidiously and arbitrarily and capriciously, thereby violating the civil rights of the Plaintiffs, and of all other persons (foster children) similarly situated, contrary to the Civil Rights Act, 42 USC 1983. Robinson v. Seattle, 119 Wn. 2d 34 (1994).

5.2 The State of Washington has acted and continues to violate the civil rights of plaintiffs because it is the practice of the Sate of Washington to cause the DSHS Trust fund unit to become the representative payee for plaintiffs without notifying them that said unit will confiscate the children's social security benefit, and without notification that the regulations of the Social Security Administration creates a preference for other adult representative payees who cannot be compelled to pay the benefit to the State of Washington.

5.3 The State of Washington violates the fourteenth Amendment to the United States Constitution because its policy of confiscating the social security benefits while acting as the protective payee for plaintiffs discriminates, without a rational basis against the class of children who do not have a private representative payee.

5.4 The State of Washington maliciously, recklessly and wantonly is invading federally protected funds for its own improper advantage, to

the detriment of Plaintiff and all other foster children's financial and emotional well-being.

VI.

CLAIM AGAINST ADDITIONAL PARTIES DEFENDANT ALLEGATIONS AGAINST STATE INCORPORATED

6.1 The Plaintiffs reallege each and every allegation contained in the claim against the State.

VII.

7.1 The Plaintiffs do additionally allege that the above named Additional Defendants, violated the Plaintiff's federal rights contrary to 42 USC 1983 in by engaging in the following conduct:

7.1.1 The Defendants have caused the Washington State Department of Social and Health Services Trust fund Unit, as a matter of regular course and policy, to apply to become the representative payee for foster children who are entitled to receive Social security benefits.

7.1.2 The Defendants did further cause the DSHS Trust Fund Unit, acting as representative payee for said foster children, to pay the social security benefit to the State of Washington, to repay the State's cost of providing foster care to said foster children.

7.1.3 The Defendant, Michael R. Hobbs did further undertake to cause the removal of Wanda Pierce as the representative payee of Danny Keffeler in legal proceedings before the Social Security Administration, and did also undertake to cause her removal as Guardian for the Estate of Danny

Keffeler in proceedings before the Superior Court of Washington on the ground that Wanda Pierce refused to pay Danny Keffeler's social security benefits to the State of Washington to reimburse the cost of foster care.

VIII.

ACTIONS OF DEFENDANTS VIOLATED PLAINTIFFS' FEDERAL RIGHTS

8.1 The aforesaid policy and actions violated the laws of the United States Government as follows:

8.1.1 The aforesaid actions each violated 42 USC 407, a federal statute designed to place social security benefits beyond the reach of beneficiaries' creditors; and

8.1.2 The aforesaid actions of the Defendants violated the 14th Amendment to the United States Constitution, because it was the practice of the Defendants to cause DSHS Trust fund Unit to become the representative payee for the foster children without notifying them that said unit would confiscate the children's Social security benefit, and without notifying them that the regulations of the Social Security Administration created a preference for other adult representative payees who could not be required to pay the benefit to the State.

8.1.3 The actions of said Defendants violated the 14th Amendment to the United States Constitution because the Defendant's policy, as alleged herein, caused a discrimination, without a rational basis, against the class of children who did not have a private representative payee.

8.1.4 The attempts to remove Wanda Pierce as Danny Keffeler's representative payee and as Guardian for his estate for the reason that she would not pay his social security benefit over to the State of Washington violated the provisions of 42 USC 407.

8.1.5 The actions of the Defendants in filing a creditor's claim against the estate of Danny Keffeler constituted a violation of 42 USC 407.

IX.

THE ACTIONS VIOLATED THE CIVIL RIGHTS ACT 42 USC 1983

9.1 The aforesaid actions of the Defendants were actions taken by then under color of state law, and in particular WAC 388-70-069 and RCW 74.13.060. The aforesaid actions of the Defendants were actions which violated rights protected by the Statues and constitution of the United States.

9.2 That the Defendants and each of them have maliciously, recklessly, wantonly, or knowingly invaded the federally protected rights for the improper advantage of their employer, the State of Washington, to the detriment of the Plaintiff and to all other foster children's financial and emotional well being.

9.3 The Defendant's actions have invidiously discriminated against the class of citizens of the United States least able to protect themselves, i.e., children in foster care who have no adult person willing or able to protect their social security benefit.

9.4 The Defendants actions have caused a knowing taking of Plaintiff's property without due process of law.

X.

DAMAGE

10.1 The Plaintiffs have been damaged in that they have been deprived of their social security benefits and are entitled to a judgment restoring said benefit plus interest.

10.2 Danny Keffeler and the Plaintiff class have incurred fees and costs in an effort to protect their federally protected benefit.

10.3 Because the children's social security benefit is necessary for their emotional and psychological development, the damage caused to the Plaintiff's class is irreparable and subject to injunction.

XI.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for a judgment against the Additional Defendants as follows:

1. For a permanent injunction enjoining the State of Washington and its agents from taking any further action whatsoever to invade the federally protected social security funds of the Plaintiff and children similarly situated; and

2. For a judgment against the State of Washington for establishment of a fund for the amount of all federally protected funds it has collected from Plaintiff and all other persons

similarly situated to be disbursed to the Plaintiff and class members as directed by the Court; and

3. For appointment of a single guardian for all class members as to that portion of their estate constituting Title II and Title XVI social security benefits to receive and distribute further social security benefits in the best interest of the foster children; and

4. In the alternative, to enjoin the State of Washington and Additional Defendants from conspiring to cause the Department of Social and Health Services Trust Fund Unit to apply to be appointed representative payee for foster children or others receiving social security benefits pursuant to Title II and Title XVI without further notification to foster children and any persons designated by 20 CFR 404.21 that:

(a) The sole purpose for the State applying is to seize and pay the social security benefits to itself as reimbursement for foster care payments it is making on behalf of the child; and

(b) If any of the category of persons designated in 20 CFR 404.21 (a) (1)-(5) and (b) (1)-(6) are appointed the child's social security benefits will not be taken away from him/her by the State; and

(c) If a guardian is appointed for the child the social security benefits will not be take away by the State; and

(d) If the child wants to object to the State being appointed and have another person

appointed or a guardian appointed that he/she may object by mailing the enclosed form in the self-addressed envelope to the State on or before the expiration of 30 days; and

(e) If the social security beneficiary, friend, representative or relative objects the State will file a petition in Superior Court to seek a determination of whether or not a guardian should be appointed for the estate of the child with respect to Title II or Title XVI social security funds.

5. For an order enjoining the State of Washington and Additional Defendants from seeking the removal or private representative payees; and

6. For an order enjoining the State of Washington from taking any measures to force guardians or representative payees to repay the cost of foster care to the State of Washington; and

7. For Plaintiff's reasonable attorney's fees and costs incurred in this action; and

8. For augmentation of attorney's fees pursuant to the appropriate Lode Star multiplier; and

9. For such other and further relief as to the court shall seem just, equitable and proper.

DATED this 17 day of October, 1997.

REINBOLD and GARDNER

By:_____ //s//
Rodney Reinbold, WSBA #4656
Co-Counsel for Plaintiffs

SUPERIOR COURT OF WASHINGTON
OKANOGAN COUNTY

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, Guardian, and other persons similarly situated, Plaintiffs, vs. STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Defendant. And LYLE QUASIM, DIRECTOR OF THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, AND MICHAEL R. HOBBS, PROGRAM MANAGER FOR DEPARTMENT OF SOCIAL AND HEALTH SERVICES DEPARTMENT, Additional Defendants.	Okanogan County No. 96-2-00157-2 SUPREME COURT NO: 57680-1 AFFIDAVIT OF LINDA GIL

STATE OF WASHINGTON)
: ss.
County of Thurston)

LINDA GIL, being first duly sworn on oath, deposes and says:

1. My name is Linda Gil. I make this

affidavit in response to paragraph 2a, 2b, and 2c of the Supreme Court's Order on Remand, to explain the services provided by the Division of Developmental Disabilities regarding the children under its care who are receiving social security benefits.

2. I am the Program Manager of the Voluntary Placement/Foster Care Program, in the Olympia Office of the Division of Developmental Disabilities (DDD) within the Department of Social and Health Services (DSHS). As Program Manager, I am responsible for the design and management of the Voluntary Placement/Foster Care statewide program that is implemented in each of the six geographic regions.

3. The Division of Developmental Disabilities (DDD) has responsibility for managing the out-of-home placement for the individuals who receive our services through this program. Currently, under RCW 74.13.350, there are 567 individuals, under the age of 21, in the DDD Voluntary Placement/Foster Care Program. These individuals, if under 18, are in the legal custody of their birth/adoptive parents or have a legal guardian. If they are over 18, they may have a guardian or may be an emancipated adult. Of the 567 individuals under care of DDD, 303 of them are receiving either Title II (SSA) disability benefits under the Social Security Act or Title XVI (SSI) benefits under the Social Security Act.

4. Until July 1999, DSHS served as representative payee for many of the children within DDD receiving social security benefits. Some children within the Voluntary Placement program

within DDD remai. with their parents or guardians; in those cases, the parents or guardian served as the child's representative payee, and continue to do so.

5. Beginning July 1999, DSHS no longer serves as representative payee for foster children within the DDD program. This is because children with developmental disabilities were transferred from the care under the Children's Administration to care provided by DDD; the transfer of the DDD children was completed in October 1998. DSHS continued to serve as representative payee until July 1999. However, since DDD does not have an SSI unit, like Children's Administration, DDD did not want to serve as the child's representative payee. Rather, private agencies and individuals apply to the Social Security Administration to serve as representative payee for most of these foster children. DSHS may still serve as representative payee in some cases where the new representative payee is not yet in place. Some individuals may not have finalized their new representative payee and DSHS may still serve as their representative payee. The intention is to have all individuals in the Voluntary Placement Program, who formerly had DSHS as a representative payee, now have another individual or agency serve that function.

6. When a birth/adoptive parent or legal guardian requests out-of-home placement for their child through the Voluntary Placement program, the child's social worker will provide the parent or guardian a list of agencies or entities who have been approved by the Social Security Administration to serve as representative payee in that area. The

parent then chooses which agency or entity he/she would like to have as representative payee for the child.

7. The private representative payee then completes all of the necessary work to change the representative payee from the parents, or DSHS, to another designated agency or individual. The Social Security Administration will then designate that agency or entity as representative payee for that child.

8. Once a representative payee has been appointed, the child's social worker will work with the agency or individual to advise them of the cost of the room and board for the child. The social security benefits are then sent directly to the agency or individual serving as representative payee.

9. The private representative payee establishes an account for the individual receiving the benefits. The private representative payee sends the foster parent or group provider a monthly check for the purpose of reimbursing the provider for the costs of room and board for the individual in foster care or group care facility.

10. Most of the child's social security benefits are used by the private representative payee for the cost of the child's room and board, with the exception of an administrative fee of $25.00, which is authorized under the Social Security Act to be paid to the representative payee. The agency also remits into the individual's account an amount of approximately $38 toward "CPI" which is considered "care, personal and incidentals."

11. If the social security benefits do not cover the cost of care for the child, DDD pays the foster parents or group home the difference between the social security benefits and the amount the provider is allowed for room and board. If the social security benefits exceeded the amount it costs to care for the child, the agency or individual representative payee will conserve and invest the remaining social security benefits into the individual's account.

12. When the money in the account reaches the amount of $2,000, the foster parent or group home operator/provider is notified that the provider must keep benefits from accumulating beyond $2,000. These expenditures must be for the goods and services for that individual only and must accompany the individual if the individual leaves the foster care provider and goes into care with another provider

13. To give an example of the process, for a child under the age of five years, the average cost of room and board is $258.00 per month. If the private representative payee received $200.00 a month in social security benefits on behalf of a child's social security benefits, the private representative payee would send $175.00, (which excludes the $25.00 administrative fee) to the foster parents or group home to cover the cost of the child's care. DSHS would then send $83.00 to the foster parents or group home to cover the difference in the cost of care.

14. From my experience in the seven months that DDD has worked with private representative payees, the private agencies and individuals serving as a child's representative payee have consistently

used the child's social security benefits only towards the cost of the child's care. The agency representative payee withholds only the allowable $25 for management of the account.

15. If the representative payee does not send the child's social security benefits to the foster parent or group home, DDD would contact the representative payee to discuss the issue and would repo[illegible] them to the Social Security Administration.

//s//

LINDA GIL
Division of Developmental Disabilities
PO Box 45310
Olympia, WA 98504
(360) 902-8440.

SUBSCRIBED AND SWORN TO before me this 13th day of January 2000.

//s//

Sandra Hintz
NOTARY PUBLIC in and for the State of Washington. My commission expires: 6/1/00

SUPERIOR COURT OF WASHINGTON
OKANOGAN COUNTY

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, Guardian, and other persons similarly situated, Plaintiffs, vs. STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Defendant. And LYLE QUASIM, DIRECTOR OF THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, AND MICHAEL R. HOBBS, PROGRAM MANAGER FOR DEPARTMENT AND SOCIAL AND HEALTH SERVICES, Additional Defendants.	No. 96-2-00157-2 SUPREME COURT No. 67680-1 AFFIDAVIT OF ALAN RHOTEN

STATE OF WASHINGTON)
: ss.
County of Thurston)

ALAN RHOTEN, being first duly sworn on oath, deposes and says:

1. My name is Alan Rhoten. I am the ACES/CAMIS Coordinator in the Headquarters of the Division of Child Support (DCS) in the Department of Social and Health Services (DSHS). DCS Headquarters is located at 712 Pear St. SE, Olympia WA 98507. ACES is the Automated Client Eligibility System. It is used by DSHS to manage public assistance programs. CAMIS is the Case and Management Information System. It is used by the DSHS Children's Administration (CA) to manage the child welfare program, including foster care.

2. DCS (formerly the Office of Support Enforcement or OSE) is the division within the DSHS Economic Services Administration (ESA) responsible for administering the State of Washington's child support enforcement program in accordance with Title IV-D of the Social Security Act and other federal and state laws. As the ACES/CAMIS Coordinator, I am responsible for child support issues relating to the State's public assistance and foster care programs. I have personal knowledge of how DCS accounts for parental child support paid to DCS in general, with a particular expertise when the child is a foster child. I make this affidavit in response to paragraph 6 of the trial court's Scheduling Order on Proceedings on Remand from Supreme Court, to explain the services performed by the Division of Child Support regarding collection and distribution of parental child support when a child is in foster care.

3. A child's parent(s) are responsible for the payment of child support when their child is in foster care. DCS is responsible for enforcing parental child

support obligations for children in foster care. Child support payments collected by DCS are disbursed based on complex state and federal laws. The federal regulations governing the distribution of child support collected in foster care cases are 45 CFR 302.51 and 45 CFR 305.52. I reviewed these regulations to assist me in preparing this affidavit. DCS must determine how support collected for children in foster care is to be distributed in accordance with these rules.

4. Each month, Children's Administration (CA) prepares a list of reimbursable foster care expenses for each child in foster care. The federal government defines reimbursable foster care expenses as foster care maintenance payments provided by the State. CA determines whether a specific foster care service payment is for maintenance or for some other purpose. DCS compares this list to the amount of child support collected for each child in order to determine how those collections are to be distributed.

5. When DCS collects a support payment for a child in foster care, it first determines how the payment will be applied to the child's case. A payment is first used to satisfy the parent's support obligation for the month in which the payment is collected (current support). Child support collected as current support is to be retained by the State to offset that month's reimbursable foster care expenses. If moneys collected as current support exceed that month's reimbursable foster care expenses, the excess is to be sent to the DSHS Office of Accounting Services (OAS) as a Distribution Over

Expenditure (DOE) payment and deposited into a trust fund account.

6. If current support is not owed for the month in which the support payment is collected, or if current support has already been paid for that month, DCS applies the payment towards prior foster care months during which the parent did not meet their support obligation. DCS refers to unpaid child support from prior months as arrears. Unlike current support, which is compared to one month's reimbursable foster care expenses, child support collected to repay arrears is to be retained by the State to offset total reimbursable foster care expenses. If moneys collected as arrears exceed total reimbursable foster care expenses, the excess is to be retained by the State to offset total TANF payments provided by the State. If moneys collected as arrears exceed total TANF payments, the excess is to be sent to OAS as a DOE payment.

7. Once a DOE payment is part of the child's trust fund it is administered by OAS and follows the same rules as any other monies deposited there, including being refunded per RCW 74.13.060(4). During 1999, DCS sent an average of 19 DOE payments to OAS each month. The average DOE payment was for $96.61.

8. DCS identifies children who receive both child support and Title XVI payments. Each month, DCS compares a list of children receiving Title XVI benefits, which is provided to DCS by the Office of Accounting Services, to a list of children DCS collected child support payments for. Any child

appearing on both lists is included in a report that DCS submits to Children's Administration.

9. Each quarter, DCS provides to the federal government a report which shows all of the support collected for children in state funded foster care as well as those whose case is jointly funded under Title IV-E by the state and federal government. Based on that quarterly report, DCS reimburses the federal government its proportionate share of child support collected for those children whose foster care was paid using Title IV-E funds.

10. Paragraph 7 of the trial court's Scheduling Order requests that DSHS provide 50 randomly chosen foster care accounts for children receiving social security payments. That paragraph further requires that those randomly selected accountings shall include at least five children who also receive parental child support payments. I have compared the 50 random cases identified by the Trust Fund Unit with DCS child support records to determine whether child support was collected. I found that child support was collected in 19 of those 50 cases. The names of the children for whom child support was collected are:

Calee Anderson	Tracey A. Lacourse
Thomas Bakkon	Scott R. Lemiere
Aisha A. Breaux	Sam A. Manning
Jonathan E. Cathey	Samantha Maurath
William Dippert	Ryan A. O'Connor
Latasha N. Enoch	Brandon A. Phillips
Jon C. Hartell	Elbert Pruett
Rachel A. Hernandez	Justin J. Reynolds

Kyle S. Hontz Anitra A. Wiley
Danetta M. Hutchinson

//s//

ALAN RHOTEN
SUBSCRIBED AND SWORN TO before me this 14th day of January 2000.

//s//

Sandra Hintz
NOTARY PUBLIC in and for the State of Washington. My commission expires: 6/1/00

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF OKANOGAN

GUARDIANSHIP ESTATE OF DANNY KEFFELER, by WANDA PIERCE, Guardian, and other persons similarly situated, Plaintiffs, v. STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Defendant, And LYLE QUASIM, DIRECTOR OF THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES; AND MICHAEL R. HOBBS, PROGRAM MANAGER FOR DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Additional Defendants.	NO. 96-2-00157-2 SUPREME COURT NO. 67680-1 AFFIDAVIT OF KAREN KEGLEY JUSTINEN

STATE OF WASHINGTON)
) ss.
County of Thurston)

KAREN KEGLEY JUSTINEN, being first duly sworn on oath, deposes and says:

1. My name is Karen Kegley Justinen. I am the Supervisor in the Trust Fund Unit, Division of Finance, in the Department of Social and Health Services (DSHS). The DSHS Finance Division Trust Fund Unit was established under the authority of RCW 74.13.060, which designates the Secretary of DSHS as custodian of funds for persons placed with the DSHS.

2. When the Secretary of DSHS is appointed by the Social Security Administration to serve as representative payee, the Trust Fund Unit is responsible for the accounting of all Social Security and Supplemental Security Income benefits. The Trust Fund Unit is also responsible for the accounting of other monies received (Veterans Administration, Railroad Retirement, Excess Child Support Payments, etc.) for children placed under the care of the DSHS. As Supervisor, I am responsible for the financial management and operation of the Trust Fund Unit.

3. Paragraph 2c of the Supreme Courts' Order on Remand (paragraph 3(c) of the trial courts' Scheduling Order) requests that DSHS provide the number of foster children in the State's custody, pursuant to RCW 74.13. There are approximately 1,411 children in foster care, as of September 1999, who are receiving social security benefits and for whom the Social Security Administration has appointed the Secretary of DSHS as their representative payee. Of these 1,411 children for whom DSHS serves as representative payee, approximately 1,325 of them are in foster care with the Children's Administration. The remain-ing 86 children are placed by the Division of Developmental Disabilities (DDD). (See Affidavit of Linda Gil.)

4. Paragraph 2d of the Supreme Court's Order on Remand (paragraph 3(d) of the trial courts' Scheduling Order) requests that DSHS provide a detailed explanation of how the State processes and uses social security payments it receives as representative payee for foster children. The Trust Fund Unit processes and uses two different types of social security benefits for the foster children in its care. Most of the foster children receive Title XVI (SSI) benefits which are benefits based on the child's disability. The remaining foster children are receiving Title II (SSA) benefits which are based on a death or disability of a parent who contributed to this social security program. Both Title II (SSA) and Title XVI (SSI) payments for foster children are recorded in the individual child's subsidiary account maintained by the DSHS Finance Division Trust Fund Unit. The actual payments are deposited to a Foster Care Trust Fund Account at the State Treasurer's Office, except for retroactive SSI payments (over 6 times the monthly benefit amount).

5. Paragraph 2d(i) of the Supreme Court's Order on Remand (paragraph 3(d)(i) of the trial court's Scheduling Order) asks whether the State maintains individual accounts for foster children. Yes. The DSHS Trust Fund Unit maintains an individual account for each of the 1,411 children referenced in paragraph 4.

6. Retroactive SSI payments (over 6 times the monthly benefit amount) are subject to different rules and are accounted for differently. They are deposited by the Social Security Administration directly to an interest-bearing Dedicated Account at a local bank. Payments deposited to this account and the interest earned are credited to the individual

child's subsidiary account maintained by the DSHS Finance Division Trust Fund Unit. Dedicated Account funds are not used to provide basic foster care services. Rather, they can only be used for permitted expenditures of special needs, primarily those relating to the child's impairment. Attached as Exhibit A is the Trust Fund Unit's guidelines for the management of dedicated funds.

7. Paragraph 2d(iii) of the Supreme Court's Order on Remand (paragraph 3(d)(iii) of the trial court's Scheduling Order) requests that DSHS explain whether, and how, social security payments the State receives as representative payee are "passed-through" to the foster parents of the beneficiary children. This paragraph (8), paragraphs 9, and 10 respond to this request. If the social security benefits received by the Trust Fund Unit are not part of the Dedicated Account, the child's social security benefits are usually used for basic foster care services for their out-of-home care. These basic services include food, clothing, shelter, and personal incidentals. These benefits can also be used for extra items (toys, athletic equipment, etc.) and special needs (therapy, adaptive equipment, increased supervision, nutritional supplements, etc.).

8. The way in which the Trust Fund Unit uses social security benefits to pay for a child's cost of care is as follows. Every month the Children's Administration generates a report that shows for each child in foster care the amount of money reimbursed by the Children's Administration to the care provider for the cost of that care. The Trust Fund Unit reviews the report and compares it to the child's trust fund account to determine the amount to be reimbursed for the child's foster care. In general,

if the amount in the trust fund account is adequate to reimburse the entire cost of the foster care, the entire amount is used. If the funds in the trust fund account are not adequate to reimburse the entire cost of the foster care, the Trust Fund Unit uses up to the amount available in the trust fund account. In some circumstances, the Trust Fund Unit may not use the trust fund account to pay for the cost of foster care even though funds are available to do so (see paragraph 11). The amount to be paid for foster care is transferred from the Trust Fund Unit's Foster Care Trust Fund Account to Children's Administration.

9. Upon request from the Children's Administration worker, funds are disbursed from a child's trust fund account for both extra items and special needs of the child. Examples of the most common disbursements are for computers, educational expenses, summer camp, counseling, toys, clothing, athletic equipment, orthodontics, etc. The process for disbursing a child's Social Security benefits is as follows:

A. Foster Parent and/or Children's Administration staff determine if a child needs any extra items or has any special needs.

B. Children's Administration staff submits a request for disbursement of funds to the Trust Fund Unit.

C. Trust Fund staff review the request and if it directly benefits the child and the child has available funds, the Trust Fund Unit disburses the funds. Usually a warrant is sent to the foster care provider made payable to a store or other service provider. Occasionally, warrants are sent directly to

the store or other service provider or to the foster care provider as reimbursement. See Exhibit B. If the staff is uncertain whether the request is an appropriate use of social security funds, the staff will consult with the Social Security Administration for approval. See DSHS policy, Disbursements From Trust Fund Account, attached as Exhibit C.

10. Children's Administration staff can request that child's Social Security payment(s) be used for their extra items or special needs instead of for basic foster care costs. See Exhibit D. Children's Administration staff can also request that a child's Social Security payments be conserved for a time period prior to their emancipation to allow a child to have funds available when they transition to living independently. See Exhibit E.

11. Funds not used for basic foster care costs, extra items, or special needs, are deposited into a collective interest bearing savings account at a local bank. The interest earned from this collective account is credited to each child's individual trust fund account on a monthly basis.

12. Paragraph 2d(ii) of the Supreme Court's Order on Remand (paragraph 3(d)(ii) of the trial court's Scheduling Order) requests that DSHS provide a detailed explanation of how the State administers those accounts with respect to the $2,000 limit on accumulation of the Title XVI social security payments. A child receiving SSI benefits cannot have available resources over $2,000 and remain eligible for the monthly SSI benefit. (Funds deposited to the Dedicated Account are exempt from the $2,000 resource limit.) The process to ensure a

child's trust fund account balance remains below the resource limit is as follows:

A. Every SSI account is reviewed each month by Trust Fund staff to determine if the balance is approaching the resource limit.

B. If the balance is nearing the resource limit, the Trust Fund Unit contacts Children's Administration staff notifying them of the need to spend down the child's account balance.

C. The Children's Administration staff assess what special needs of the child could be met using the excess funds and request disbursement of funds from the Trust Fund Unit.

D. If the request is an appropriate use of the child's Social Security benefits, the Trust Fund Unit disburses the funds.

13. Paragraph 2e of the Supreme Court's Order on Remand (paragraph 3(e) of the trial court's Scheduling Order) requests that DSHS provide a detailed explanation of the services DSHS provides on behalf of foster care children in its capacity as representative payee. The Trust Fund Unit provides a number of other services on behalf of the foster children. As described above, the Trust Fund Unit uses a child's social security benefits for basic foster care, extra items, and special needs, or deposits their funds into an interest bearing account maintained for the child. The Trust Fund Unit also monitors the amount of monthly payment received for the child to ensure the correct benefit amount is received from the Social Security Administration, and monitors the amount of dedicated installment payments deposited by the Social Security Administration directly into

the child's dedicated account, to ensure the correct retroactive benefit amount is received.

14. The Trust Fund Unit staff also communicates with the Social Security Administration to resolve any discrepancies regarding benefits due, overpayment amounts, etc. The Trust Fund Unit will refund, to the Social Security Administration, benefits for which the child is not entitled to.

15. The Trust Fund Unit staff also complies with strict reporting and accounting requirements. The Trust Fund Unit reports to the Social Security Administration if bal ces exceed the SSI resource limit of $2000; submits annual accountings for each child to the Social Security Administration (reporting on benefits received, used, and conserved); and submits additional account information to the Social Security Administration (interest earned, account balances, etc.) as requested. The Trust Fund Units maintains complete and individual records of each child's account for auditing purposes.

16. Furthermore, the Trust Fund Unit will forward a child's remaining balance or unused benefits to either the Social Security Administration or the new payee, when the Social Security Administration appoints a new representative payee.

17. Paragraph 6 of the trial court's Scheduling Order requests a written explanation of how DSHS accounts for and makes parental child support payments available to the child, and an explanation of how they are taken into account in the process of calculating refunds provided for by RCW 74.13.060 (4). Excess child support payments received by the Trust Fund Unit for a child are not used to

reimburse for foster care expenses. They are, however, available for any extra items or special needs for the child. The Trust Fund Unit deposits these funds in an interest bearing account. When a child leaves DSHS care, the remaining balance of funds are disbursed to the custodial parent or to the child if they are over age 18, in accordance with RCW 74.13.060(4). See Exhibit F.

18. Paragraph 7 of the trial court's Scheduling Order requests that DSHS provide 50 randomly chosen foster care accounts for children receiving social security payments. The 50 random accountings were selected from the 97/99 biennium closed trust fund accounts. These accounts were selected instead of current open cases as the accountings had already been completed for these closed cases. The total number of 97/99 closed accounts is 1,295. This number was divided by 50 (random accountings) and equaled 25.9. Every 25th case, up to 50, was selected.

19. Paragraph 2f of the Supreme Court's Order on Remand (paragraph 3(f) of the trial court's Scheduling Order) requests that DSHS identify the number of class members and how far back their claims extend. The Trust Fund Unit does not have a file or record for every foster child who has received social security benefits and for whom DSHS has served as representative payee. The accounting records available are limited to those cases closed since July 1991. The Trust Fund Unit has 7,798 records for foster children. Most of these are accounting records for which DSHS served as representative payee. Some of the records are not accounting records. For example, some records simply contain correspondence applying for social

security benefits that were denied. A final count of actual class members cannot be determined without manually reviewing each of those 7,798 records.

20. In preparing this affidavit, I relied on the Trust Fund Procedure Handbook, the listing of closed trust fund cases, the list of current trust fund cases, and individual children's records.

/s/
KAREN KEGLEY JUSTINEN
DSHS Finance Division
PO Box 45842
Olympia, WA 98504-5842
(360) 664-5800

SUBSCRIBED AND SWORN TO before me this ____ day of January, 2000.

/s/
Sandra Hintz
NOTARY PUBLIC in and for the Stateof Washington. My commission expires: 6/1/00

Exhibit A – Page 1 of 4

DEDICATED ACCOUNTS

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 requires that a payee establish and maintain a separate account for individuals under age 18 that receive past due SSI benefits that exceed the sum of 6 times the Federal benefit rate and State supplement. These funds are deposited by Social Security into a "Dedicated Account".

NOTIFICATION OF DEDICATED ACCOUNT: The Trust Fund Unit Supervisor will update client's CAMIS SSI record to indicate that a client is *due* "Dedicated Funds". Upon receipt of the first payment, client's SSI record will be updated to show the amount *received* and the date of deposit. If the client is to receive installment payments, the amounts and dates *due* will also be updated. When installment payments are *received*, client's SSI record will be updated with the amount and date of deposit.

USE OF DEDICATED FUNDS: Dedicated funds may only be used for permitted expenditures, primarily those relating to the child's impairment. Funds cannot be used for routine food, clothing, or shelter except as approved by SSA.

I. Allowed Uses

a) Medical Treatment
b) Education or Job Training

II. Allowed Uses if they Benefit Child and are Related to Child's Impairment

a) Personal Needs Assistance

b) Special Equipment
c) Housing Modification
d) Therapy or Rehabilitation

III. Other Allowed Uses if Approved by SSA

a) Special Transportation, Modified Instructional Materials
b) Special Foods/Clothes
c) Increased Electric Bills for Devices for Child
d) Special Day Care and Recreation
e) Food and Vet Care for Guide Dog
f) House Repair for Damage Done by Child
g) Payment of Past Attorney Fees

These examples are meant as a guide, not an inclusive list of items/services that could be related to a child's impairment.

DISBURSEMENT OF FUNDS:

Following are the procedures for disbursing funds:

A. Regional Coordinator submits "Dedicated Account Disbursement Request" form and purchase invoice/bill* to Trust Fund Unit Supervisor.

B. **I & II Allowed uses** – If request meets "permitted expenditures" criteria, TF disburses funds.

III Allowed uses – 1. TF Supervisor submits to Social Security for approval.

2. Social Security returns form to TF approved/disapproved.

3. TF Supervisor forwards copy to Reg. Coordinator

4. TF disburses funds for approved requests.

C. Trust Fund staff update CAMIS SSI record to note disbursement.

***Purchase invoice or bill must include a clear description of items or services to be purchased and the amounts.**

Exhibit A – Page 4 of 4

DEDICATED ACCOUNT DISBURSEMENT REQUEST

Karen Kegley Justinen, DATE: _____
Trust Fund Unit Supervisor
Fax# (360) 664-5715

FROM: _____, Region ____ Coordinator _____
signature phone #

_____, SSI Facilitator _____
signature *phone #*

****

CLIENT NAME:_____ **DOB:**_____

CAMIS ID# _____ **SSN:**_____

****

Please check one of the following:

___ I. Allowed Uses ___ II. Allowed Uses related to Impairment ___ III. Other Allowed Uses if approved by SSA

GOODS/SERVICES	AMOUNT
_____	_____
_____	_____
_____	_____
Total	$_____

Relationship to Child's Impairment/Justification for Expenditure:

_____

_____

Payee name/address: _____

_____

Exhibit B – Page 1 of 11

A-19 State of Washington REVENUE REFUND	Agency No.	Location Code
	3000	

AGENCY NAME

Department of Social & Health Services
OAS/Trust Fund Unit
PO Box 9501
Olympia, WA 98507-9501

CLAIMANT

~~xxxxxxxxxxx~~—DDS, for
~~xxxxxxxxxxxxxxxxxx~~
1415 HARRISON, SUITE 202
OLYMPIA, WA 98502

Date	Description	Amount	Agency Use
	TO TRANSFER FUNDS FROM THE TRUST FUND ACCOUNT OF ~~xxxxxxxxxxxxxx~~ FOR ORTHODONTIC TREATMENT.	$3,690.00	2000

Prepared By	Tele. #	Date	Agency Approval	Date
SHERYL CHOATE			//s//Karen Kegley-Justinen	9/30/98

Dos. Date	Print Run Date	Current Doc. No.	Reference Doc. No.	Vendor Number	Vendor Message	UBI Number
10-1-98		TRU		VOD1	~~Xxxxxxx~~	

Trans Code	Program Index	Source	Amount	Invoice
198	A0000	410000	$3,690.00	TRUSTEE

Account Approval For Payment	Date	Warrant Total	Warrant Number
		$3,690.00	

Exhibit B – Page 2 of 11

From: Mike Hobbs
To: EXCHANGE.FINOAS.JUSTIKL
Date: 9/25/98 4:45pm
Subject: ~~xxxxxxxxxx~~ Orthodonture (434444)

Karen please forego reimbursement of SSI for a period of time to issue a warrant to
~~xxx xxxx~~ DDS
1415 Harrison Suite 202
Olympia, WA 98502
in the amount of $3690.00
These braces are medically indicated and are not just for cosmetic reasons. I will be sending a copy of the bill I received from Dr. ~~xxxx~~.
We are making payment in full to receive a 10% discount.

cc: HOMI300, CYFS6SHE.WOBR300, CYFS6ABE.WALO300

[the following is an attached invoice]

~~xxxxxxx~~, D.D.S., P.S. DATE __
Practice Limited to Orthodontics FAMILY NUMBER __
1415 HARRISON SUITE 202 TOTAL DUE __
OLYMPIA, WASHINGTON 98502
(360) 786-1600

AMOUNT ENCLOSED $__

TO ASSURE PROPER CREDIT TO YOUR ACCOUNT PLEASE RETURN THIS PORTION OF YOUR STATEMENT WITH PAYMENT.

ALL PAYMENTS DUE BY THE 25th OF THE MONTH

Exhibit B – Page 3 of 11

MIKE HOBBS
FEDERAL FUNDING MANAGER
REGION 6 DSFS
P.O. BOX 45714
OLYMPIA, WA. 98504-5714

AAO logo

date stamp 9-25-98

DATE	PATIENT REFERENCE	DESCRIPTION	AMOUNT
	~~xxxxxxxxxxxxx~~		
		PHASE II ORTHO TREATMENT	4100.00
		CASH DISCOUNT 10%	-410.00
		TOTAL	3690.00
		TOTAL AMOUNT DUE	

CURTIS SAPP, D.D.S., P.S. •1415 HARRISON SUITE 202 • OLYMPIA, WA 98502

Exhibit B – Page 4 of 11

A-19 State of Washington REVENUE REFUND	Agency No.	Location Code
	3000	

AGENCY NAME
Department of Social & Health Services OAS/Trust Fund Unit PO Box 9501 Olympia, WA 98507-9501
CLAIMANT
~~xxxxxxxxxx~~ ~~xxxxxxxxxxxxxxxxx~~ ~~xxxxxxxxxxxxxxxxx~~ ~~xxxxxxxxxxxxxxxxxxxx~~

Date	Description	Amount	Agency Use
	To transfer funds from the trust fund account of ~~xxxxxxxxxxxxx~~ 7-13-80, for Christas presents, computer game, Cam-corder.	$1291.75	SSA

Prepared By	Tele. #	Date	Agency Approval	Date
//s//			//s//	1/25/93

Dos. Date	Print Run Date	Current Doc. No.	Reference Doc. No.	Vendor Number	Vendor Message	UBI Number
1-22-93				VODO	~~xxxxxxx~~	

Trans Code	Program Index	Source	Amount	Invoice
198	A0000	410000	$1291.75	Bingham

Account Approval For Payment	Date	Warrant Total	Warrant Number

Exhibit B – Page 5 of 11

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
S8 • 771 Vine• PO Box 330 • Kelso WA 98626-0026

January 7, 1993

Trust Fund Unit
PO Box 9501
Oly, WA 98504
M. S. 5842/OB24C

Dear Karen,
I went on a homevisit on January 6, 1993 to see ~~xxxxxxxx~~, the guardians of ~~xxxxxxx~~ and ~~xxxxxxx~~. While on the home-visit, the ~~xxxxxx~~ and ~~xxx~~ presented me with a list of items that they are hoping the trust-fund can pay. Please make out a check to ~~xxxxxxx xxxxxx xxxxxx xxxxx xxxxx~~ for the following items.

Christmas presents---	$85.00	
Computer game--------	$60.00	
Sonny Cam-corder----	$1146.75	
TOTAL----------	$1291.75	This is all from ~~xxxxx~~'s trust fund.

Sincerely,

/s/

Steve Wolden,
Social Worker III

Exhibit B – Page 6 of 11

A-19 State of Washington REVENUE REFUND	Agency No.	Location Code
	3000	

AGENCY NAME
Department of Social & Health Services OAS/Trust Fund Unit PO Box 9501 Olympia, WA 98507-9501
CLAIMANT
[redacted]

Date	Description	Amount	Agency Use
	TO TRANSFER FUNDS FROM THE TRUST FUND ACCOUNT OF [redacted] FOR CONTACT LENSES	$250.00	SSI

Prepared By	Tele. #	Date	Agency Approval	Date
//s// Todd Wollen			//s//	5-26-95

Dos. Date	Print Run Date	Current Doc. No.	Reference Doc. No.	Vendor Number	Vendor Message	UBI Number
5/25/95				VOD1		

Trans Code	Program Index	Source	Amount	Invoice
198	A0000	410000	$250.00	GARRETT

Account Approval For Payment	Date	Warrant Total	Warrant Number
		$250.00	

Exhibit B – Page 7 of 11

MEMORANDUM

DSHS logo

TO: Trust Fund
Karen Kegley

DATE: 5/22/95
SUBJECT: [redacted] 250.00 for Contact Lenses

FROM: Patricia Cravens

lease send the foster parent [redacted] $250.00 to purchase contact lenses for [redacted].

Exhibit B – Page 8 of 11

A-19 State of Washington REVENUE REFUND	Agency No.	Location Code
	3000	

AGENCY NAME
Department of Social & Health Services OAS/Trust Fund Unit PO Box 9501 Olympia, WA 98507-9501
CLAIMANT
~~XXXXXXXXXXXXXXXXXX~~ ~~XXXXXXXXXXXX~~ ~~XXXXXXXXX~~ ~~XXXXXXXXXXXXXXX~~

Date	Description	Amount	Agency Use
	TO TRANSFER FUNDS FROM THE THRUST FUND ACCOUNT OF ~~XXXXXXXXXXXXXX~~ FOR CHRISTMAS, BIRTHDAY GIFTS, AND SPENDING MONEY FOR MEXICO TRIP.	$1,500.00	SSA

Prepared By	Tele. #	Date	Agency Approval	Date
//s//			//s//	11/16/95

Dos. Date	Print Run Date	Current Doc. No.	Reference Doc. No.	Vendor Number	Vendor Message	UBI Number
11/16/95				VOD1	~~XXXXXXX~~	

Trans Code	Program Index	Source	Amount	Invoice
198	A0000	410000	$1,500.00	BINGHAM

Account Approval For Payment	Date	Warrant Total	Warrant Number

Exhibit B – Page 9 of 11

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
S8-6 • 711 Vine • PO Box 330 • Kelso WA 98626-0026

November 7, 1995

Department of Social and Health Services
OAS/Trust Fund Unit
PO Box 9501
Olympia, WA 98507-9501

To Whom It May Concern,

~~XXXXXXXXXX~~ would like to access $1,500.00 dollars from his trust fund, for Christmas presents, birthdays gifts, and money for his mission trip to Mexico. I support the use of his trust money for this purpose. If you have any questions, please feel free to contact me at (360) 577-2187.

Sincerely,

/s/

Steve Wolden
Social Worker III
Sincerely, [sic]

Exhibit B – Page 10 of 11

A-19 State of Washington REVENUE REFUND	Agency No.	Location Code
	3000	

AGENCY NAME
Department of Social & Health Services OAS/Trust Fund Unit PO Box 9501 Olympia, WA 98507-9501
CLAIMANT
~~xxxxxxxx~~–FOR ~~xxxxxxxxxxxxxxxxxx~~ ~~xxxxxxxxxxxxxxxxxx~~ ~~xxxxxxxxxxxxxxxxxx~~

Date	Description	Amount	Agency Use
	TO TRANSFER FUNDS FROM THE TRUST FUND ACCOUNT OF ~~xxxxxxxxxxxxxxx~~ FOR SCHOOL UNIFORM.	$200.00	SSA

Prepared By	Tele. #	Date	Agency Approval	Date
//s//		8/30/94	//s//	8/30/94

Dos. Date	Print Run Date	Current Doc. No.	Reference Doc. No.	Vendor Number	Vendor Message	UBI Number
8/30/94				VOD1	~~xxxxxxx~~	

Trans Code	Program Index	Source	Amount	Invoice
198	A0000	410000	$200.00	GARRETT

Account Approval For Payment	Date	Warrant Total	Warrant Number

Exhibit B – Page 11 of 11

MEMORANDUM

DSHS logo

TO: Karen Kegley DATE: 8/26/94
Trust Fund SUBJECT: School Clothing

FROM: Patricia Cravens
Tacoma DCFS

Please send 200.00 to the foster mother to purchase special uniforms for school.

~~xxxxx xxxxxxx~~

~~xxx xxxxx xxxxx~~

~~xxxxxx xxxx~~

~~xxxxx~~

Exhibit C

DISBURSEMENTS FROM TRUST FUND ACCOUNT

- **DISBURSEMENT REQUEST:** Disbursement requests must be sent on State letterhead (by state mail or fax) and include the worker's signature and the purchase invoice or bill. The purchase invoice/bill must include a clear description of items/services to be purchased and the amounts.
- **PAYEE:** The payee must be the store or service provider. The warrant can either be mailed directly to the payee or sent to the worker or foster parent to distribute. *Upon a showing of receipts, payment can be made payable to the foster parents for reimbursement of pre-approved purchases.*
- **RECEIPTS:** Receipts from purchases must be received by the Trust Fund Unit within 3 weeks from the date warrant issued.
- **USE OF FUNDS:** Funds can be used for any goods or services that directly benefit the client. Examples include *clothing, toys, computer, summer camp, medical/dental expenses (not covered by medical coupons), educational expenses, etc.*
- **TRACKING AND DISBURSEMENT OF CLIENT BELONGINGS:** Any items purchased are the clients, and must be taken with the client if placement changes. It is the Social Worker's responsibility to ensure client belongings are properly accounted for and appropriately disbursed when client changes placement or upon their leaving care/death.
- **APPROVAL TO FOREGO REIMBURSEMENT OF COST OF CARE:** The Regional Federal Funding Coordinators (or their designated SSI Facilitator) can request the Trust Fund Unit to disburse client funds for special needs rather than reimbursing for their cost of care.

Exhibit D – Page 1 of 28

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
N56-1 • 2809 – 26th Ave S • Seattle WA 98144-6094

TO: Gail Baker
Regional Federal Funding Coordinator

FROM: Karen Fomin
SSI Facilitator

RE: Disbursement request for ~~xxxxxxxxx~~ BD 7/30/90; Camis ID 1519594

~~Xxxx~~ is in a pre-adopt home and the adoption should be finalized sometime this year. ~~Xxxx xxxx~~, preadopt mom, has requested payment for private school tuition and registration fee.

A total of $3429.00 of Title II back payments were received on 5/24/99. This would cover the cost of 9/99-6/00 school tuition and reimbursement of the 75.00 registration fee.

If we pay the total amount of the yearly tuition, there would be a 10% savings. Enclosed is the fee schedule, a letter from the Pacific Christian School and a receipt for the registration fee.

Specifically I am requesting a check of $3119.00 be sent to Pacific Christian School, P.O. Box 98600, Seattle, WA 98198 for ~~xxxxxxxxx~~'s school's tuition. Also, a 75.00 check made payable to ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~.

Exhibit D – Page 2 of 28

[hand-written note]

6/2/99

Approved. The department agrees to forego reimbursement for cost of care in the amount of $3194.00 in favor of school tuition and registration fees. Funds to be disbursed as above. Thanks!

/s/Gail Baker

DCFS Region 4 Trust Fund Liaison

Exhibit D – Page 3 of 28

A-19 State of Washington REFUND REVENUE	Agency No.	Location Code
	3000	

AGENCY NAME
Department of Social & Health Services OAS/Trust Fund Unit PO Box 9501 Olympia, WA 98507-9501
CLAIMANT
PACIFIC CHRISTIAN SCHOOL for ~~XXXXXXXXXXXXXXXX~~ P.O. BOX 98600 SEATTLE, WA 98198

Date	Description	Amount	Agency Use
1519594	TO TRANSFER FUNDS FROM THE TRUST FUND ACCOUNT OF ~~XXXXXXXXXXXXXX~~ FOR AUGUST 1999 – MAY 2000 TUITION.	$3,119.00	2000

Prepared By	Tele. #	Date	Agency Approval	Date
SHERYL CHOATE //s//			//s//	6/7/99

Dos. Date	Print Run Date	Current Doc. No.	Reference Doc. No.	Vendor Number	Vendor Message	UBI Number
6-7-99		TRU		VOD1	~~XXXXXXX~~	

Trans Code	Program Index	Source	Amount	Invoice
198	A0000	410000	$3,119.00	TRUSTEE

Account Approval For Payment	Date	Warrant Total	Warrant Number
		$3,119.00	

Exhibit D – Page 4 of 28

A-19 State of Washington REVENUE REFUND	Agency No.	Location Code
	3000	

AGENCY NAME
Department of Social & Health Services OAS/Trust Fund Unit PO Box 9501 Olympia, WA 98507-9501
CLAIMANT
~~Xxxxxxxxxxxxxxx~~ for ~~xxxxxxxxxxxxxxxxxx~~ ~~xxxxxxxx xxxxxxx xxxxxxx~~ ~~xxxxxxxxxxxxxxxxxx~~

Date	Description	Amount	Agency Use
1519594	TO TRANSFER FUNDS FROM THE TRUST FUND ACCOUNT OF ~~xxxxxxxxxxxxxxx~~ FOR PRIVATE SCHOOL REGISTRATION FEE.	$75.00	2000

Prepared By	Tele. #	Date	Agency Approval	Date
//s// Sheryl Choate			//s//Karen Kegley Justinen	6/7/99

Dos. Date	Print Run Date	Current Doc. No.	Reference Doc. No.	Vendor Number	Vendor Message	UBI Number
6/7/99		TRU		VOD1		

Trans Code	Program Index	Source	Amount	Invoice
198	A0000	410000	$75.00	TRUSTEE

Account Approval For Payment	Date	Warrant Total	Warrant Number
		$75.00	

Exhibit D – Page 5 of 28

Page: 1 Document Name: untitled

READMAIL Read Mail For: CSHE300 SYSMRVW SYSMRVWM

From : KEGK300 KAREN KEGLEY JUSTINEN
Subject: ~~xxxxxxxx~~ Date: 05/12/1999 Time: 07:47AM
Copy : Forwarded: Y Read: Reply:

please handle. Thanks.

********** End of Attachment **********

Karen---The above-named child has a Trust Fund balance of only $225 or so... He has some specific needs that total approximately $1100. So, by copy of this e-mail I am stating the department agrees to forego reimbursement for cost of care in the amount of approximately $900. SSIF Dennis Hostetter will be FAXing you a request to disburse $358.00 to the Rainier Vista Boys & Girls Club, plus $409.50 to the Starbucks Center Sears, Roebuck and Co. The checks will need to be mailed to caregiver ~~xxxxxxxxxxxxxxxxxxxxxxxxx~~. Info on the additional expenditures to total the approximately $1100 will follow... Thanks! Gail Baker, DCFS Region 4 Trust Fund Liaison 5/11/99

*** END OF NOTE ***

ORIG. SENT TO : KEGK300
COPIES SENT TO : BAKG300 HODE300 BLOM300

**** Originated by: BAKG300 , GAIL BAKER *****

Exhibit D – Page 6 of 28

A-19 State of Washington REVENUE REFUND	Agency No.	Location Code
	3000	

AGENCY NAME
Department of Social & Health Services OAS/Trust Fund Unit PO Box 9501 Olympia, WA 98507-9501
CLAIMANT
RAINIER VISTA BOYS & GIRLS CLUB for ~~xxxxxxx~~

Date	Description	Amount	Agency Use
	TO TRANSFER FUNDS FROM THE TRUST FUND ACCOUNT OF ~~xxxxxxxxxxxxxx~~ FOR 6/21-8/20 SUMMER CAMP.	$358.00	5000

Prepared By	Tele. #	Date	Agency Approval	Date
//s// Sheryl Choate			//s//Karen Kegley-Justinen	5/12/99

Dos. Date	Print Run Date	Current Doc. No.	Reference Doc. No.	Vendor Number	Vendor Message	UBI Number
5/12/99		TRU		091053 2600 01	~~xxxxxxxx~~	

Trans Code	Program Index	Source	Amount	Invoice
198	A0000	410000	$358.00	TRUSTEE

Account Approval For Payment	Date	Warrant Total	Warrant Number
		$358.00	

Exhibit D – Page 7 of 28

A-19 State of Washington REVENUE REFUND	Agency No.	Location Code
	3000	

AGENCY NAME
Department of Social & Health Services OAS/Trust Fund Unit PO Box 9501 Olympia, WA 98507-9501
CLAIMANT
SEARS, ROEBUCK & COMPANY for ~~xxxxxxx~~

Date	Description	Amount	Agency Use
	TO TRANSFER FUNDS FROM THE TRUST FUND ACCOUNT OF ~~xxxxxxxxxxxxxx~~ FOR CLOTHING.	$409.50	5000

Prepared By	Tele. #	Date	Agency Approval	Date
//s// Sheryl Choate			//s//Karen Kegley-Justinen	5/12/99

Dos. Date	Print Run Date	Current Doc. No.	Reference Doc. No.	Vendor Number	Vendor Message	UBI Number
5-12-99		TRU		VOD1		

Trans Code	Program Index	Source	Amount	Invoice
198	A0000	410000	$409.50	TRUSTEE

Account Approval For Payment	Date	Warrant Total	Warrant Number
		$409.50	

Exhibit D – Page 8 of 28

Justinen, Karen

From: Bailey, Carol
Sent: Wednesday, April 07, 1999 4:02 PM
To: Justinen, Karen
Cc: Reynolds, Leola; Bailey, Carol
Subject: ~~xxxxxxxxxxxxxxx~~

Karen, Lee brought me up to speed regarding ~~xxxx~~ trust fund, the need to expend some of those accumulated funds, and the mix-up about the actual amount available. Given that the expenditure for the computer and modum was within the amount range given to the foster parents to spend, and the actual amount available has now been discovered to be less, I would like to request that we forego reimbursement for this child temporarily so that we may reimburse the foster parent in full ($1,693.92). Thanks Karen. If you need anything additional from me please let me know. Carol.

Exhibit D – Page 9 of 28

A-19 State of Washington REVENUE REFUND	Agency No.	Location Code
	3000	

AGENCY NAME
Department of Social & Health Services OAS/Trust Fund Unit PO Box 9501 Olympia, WA 98507-9501
CLAIMANT
INCOMMAND INC. 702 N. 1st AVE YAKIMA, WA 98902

Date	Description	Amount	Agency Use
376011	TO TRANSFER FUNDS FROM THE TRUST FUND ACCOUNT OF ~~xxxxxxxxxxxxxxx~~ FOR LAPTOP COMPUTER AND MODEM.	$1,693.92	5000

Prepared By	Tele. #	Date	Agency Approval	Date
//s// Sheryl Choate			//s//Karen Kegley-Justinen	4/5/99

Dos. Date	Print Run Date	Current Doc. No.	Reference Doc. No.	Vendor Number	Vendor Message	UBI Number
4-8-99		TRU		091162 829900		

Trans Code	Program Index	Source	Amount	Invoice
198	A0000	410000	$1,693.92	TRUSTEE

Account Approval For Payment	Date	Warrant Total	Warrant Number
		$1,693.92	

Exhibit D – Page 10 of 28

091162829900 4/2/99

Incommand Inc.
702 N. 1st Ave.
Yakima, WA 98902
509-576-8370

date stamp 4-2-99

Laptop Quote

Gateway 150 mhz w/MMX laptop		1399.95
56K PCMCIA Fax Modem		169.95
	Subtotal	1569.90
	Tax	124.02
	Total	1693.92

Jonathan Craig /s/
Sales Manager
Courtney W. Robin /s/
Salesman/Technician

Exhibit D – Page 11 of 28

Choate, Sheryl

From: Justinen, Karen
Sent: Wednesday, September 23, 1999 1:52 PM
To: Choate, Sheryl
Subject: FW: [redacted] 25788 –Reply– Forwarded

Please handle. thanks.

From: McPhillips, Dona
Sent: Wednesday, September 23, 1998 1:41 PM
To: Justinen, Karen
Cc: Harris, Lazona; McPhillips, Dona
Subject: [redacted] 25788 -Reply -Forwarded

[envelop]

[redacted] 25788
-Reply

Please see attached supervisor approval for $75 from SSI monies to not be reimbursed for cost of care but instead sent to [redacted] foster mother for the payment of an athletic fee for football. This meets the case plan to help meet [redacted] special needs.
Please make the check to [redacted].
Thank you.

Exhibit D – Page 12 of 28

Choate, Sheryl

From: Galt, Kristy
Sent: Wednesday, September 23, 1998 11:43 AM
To: McPhillips, Dona
Subject: xxxxxxxx 25788 -Reply

REQUEST APPROVED.

>>>Dona McPhillips 09/23/98 10:43am>>>
~~xxxx~~ is on SSI and has been in a guardianship for quite a time. He behavior as he is aging has become even more difficult. He is being home-schooled as he can no longer be safe with others in the classroom. This foster parent receives Exceptional cost for that home schooling. The foster family has paid out of their pocket for many activities for ~~xxxx~~ as it is important to keep his energies channeled in positive activties. Both I and the social worker feel that is it in ~~xxxx~~'s best interest to help support these foster parents. They have asked for the Athletic fee of $75 for this year's football participation. The sw and I are both supportive of this request. We are asking for the Region not to take full reimbursement for the cost of care from his SSI monies for the month of Sept. so that the $75 fee can be paid.

Exhibit D – Page 13 of 28

A-19 State of Washington REVENUE REFUND	Agency No.	Location Code
	3000	

AGENCY NAME
Department of Social & Health Services OAS/Trust Fund Unit PO Box 9501 Olympia, WA 98507-9501
CLAIMANT
~~xxxxxxxx~~ for ~~xxxxxxxxx~~ ~~xxxxxxxx~~ ~~xxxxxxxxxxxxxx~~

Date	Description	Amount	Agency Use
	TO TRANSFER FUNDS FROM THE TRUST FUND ACCOUNT OF ~~xxxxxxxxxxxxxx~~ 062383, FOR FOOTBALL FEE.	$75.00	5000

Prepared By	Tele. #	Date	Agency Approval	Date
//s// Sheryl Choate			//s//Karen Kegley-Justinen	9/24/98

Dos. Date	Print Run Date	Current Doc. No.	Reference Doc. No.	Vendor Number	Vendor Message	UBI Number
9-24-98		TRU		VOD1	~~xxxx~~	

Trans Code	Program Index	Source	Amount	Invoice
198	A0000	410000	$75.00	TRUSTEE

Account Approval For Payment	Date	Warrant Total	Warrant Number
		$75.00	

Exhibit D – Page 14 of 28

Page: 1 Document Name: untitled

READMAIL Read Mail For: CSHE300 SYSMRVW SYSMRVWM

From : BAKG300 GAIL BAKER
Subject: ~~xxxxxx~~ Date: 01/14/1999 Time: 02:59PM
Copy : Y Forwarded: Read: Reply:

This young woman is over 18 and has left DCFS paid care. Please forward the $2,000.00 set aside for her ~~xxxxxx,xxxxxx xxxxxxxxxxxx xxxxxxxxx xxxxx~~. Phone ~~xxxxxxx-xxxxxxxxx~~ if you need to call ~~xxx~~. After you have reimbursed for all DCFS paid care, you can send any Trust Fund balance to the above address also. Please rush the $2,000.00. ~~xxxx~~ will go to her local SSA office to apply to be her own payee. Thanks! Gail Baker, DCFS Region 4 Trust Fund Liaison 1/14/99.

*** END OF NOTE***

Forward to ID: _____ Attachment: Y Forward Acknowledgement: ___ (Y or Blank)

Exhibit D – Page 15 of 28

A-19 State of Washington REVENUE REFUND	Agency No.	Location Code
	3000	

AGENCY NAME
Department of Social & Health Services OAS/Trust Fund Unit PO Box 9501 Olympia, WA 98507-9501
CLAIMANT
~~xxxxxxxxxxxxxxxxx~~ ~~xxxxxxxxxxx~~ ~~xxxxxxxxxxxxxxxxxxxxxxxxxx~~ ~~xxxxxxxxxxxxxxxxxxxxxxxxx~~

Date	Description	Amount	Agency Use
	TO TRANSFER FUNDS FROM THE TRUST FUND ACCOUNT OF ~~xxxxxxxxxxxxxxxx~~ FOR INDEPENDENT LIVING EXPENSES.	$2,000.00	2000

Prepared By	Tele. #	Date	Agency Approval	Date
SHERYL CHOATE			//s//Karen Kegley-Justinen	1/15/99

Dos. Date	Print Run Date	Current Doc. No.	Reference Doc. No.	Vendor Number	Vendor Message	UBI Number
1-15-99		TRU		VOD1	~~xxxxxxx~~	

Trans Code	Program Index	Source	Amount	Invoice
198	A0000	410000	$2,000.00	TRUSTEE

Account Approval For Payment	Date	Warrant Total	Warrant Number
		$2,000.00	

Exhibit D – Page 16 of 28

Choate, Sheryl

From: Keyser, Judi
Sent: Friday, July 16, 1999 4:13 PM
To: Choate, Sheryl
Subject: RE: ~~xxxxx xxxxxxxxx~~

You may have my approval. you can send the money to ~~xxx~~ at the following address: ~~xxxx xxxxxxxx xxxxxx xxxxxx~~. Thanks.

—Original Message—
From: Choate, Sheryl
Sent: Friday, July 16, 1999 1:49 PM
To: Keyser, Judi
Cc: Choate, Sheryl
Subject: ~~xxxxxxxxxxxxxxx~~

Per the 6/8/99 camis memo from Barb Turner requesting that we forward $1200 to ~~xxx~~ after she turned 18 - We will need your approval to forego reimbursement for that amount. thank you.

Exhibit D – Page 17 of 28

A-19 State of Washington REVENUE REFUND	Agency No.	Location Code
	3000	

AGENCY NAME
Department of Social & Health Services OAS/Trust Fund Unit PO Box 9501 Olympia, WA 98507-9501
CLAIMANT
~~xxxxxxxxxxxxxxxxx~~ ~~xxxxxxxxxx~~ ~~xxxxxxxxxxxxxxxxxxxxxxxxx~~

Date	Description	Amount	Agency Use
656963	TO TRANSFER FUNDS FROM THE TRUST FUND ACCOUNT OF ~~xxxxxxxxxxxxxxx~~ FOR INDEPENDENT LIVING EXPENSES.	$1,200.00	2000

Prepared By	Tele. #	Date	Agency Approval	Date
SHERYL CHOATE			//s//Karen Kegley-Justinen	7/16/99

Dos. Date	Print Run Date	Current Doc. No.	Reference Doc. No.	Vendor Number	Vendor Message	UBI Number
7-16-99		TRU		VOD1	~~xxxxxxx~~	

Trans Code	Program Index	Source	Amount	Invoice
198	A0000	410000	$1,200.00	TRUSTEE

Account Approval For Payment	Date	Warrant Total	Warrant Number
		$1,200.00	

Exhibit D – Page 18 of 28

Page: 1 Document Name: untitled

READMAIL Read Mail For: CSHE300 SYSMRVW SYSMRVWM

From : BAKG300 GAIL BAKER
Subject: ~~xxxxxx~~ 1460652 Date: 09/22/1998 Time: 11:03 AM
Copy : Y Forwarded: Read: Reply:

Karen---By copy of this e-mail I am stating the department agrees to forego reimbursement for costof care in the amount of $2,465.00 in favor of current expenditures for school clothes and a haircut, and in favor of savings for emancipation for thisyoung woman. So, please issue a check for $465.00 to ~~xxxxx~~ for ~~xxxxxx~~ and mail it to ~~xxxx~~, Associated Counsel for the Accused, ~~xxxxxx xxxxxxxxxx~~, ~~xxxxxxx xxxxx~~. Phone 253-520-6509 Ext. 248 if you need to talk to Sue. Then, please set aside $2,000.00 from income which we will disburse to ~~xxxx~~ after age 18 and dismissal of the dependency. Please let me know there are any questions or problems. Thanks! Gail Baker DCFS Region 4 Trust Fund Liaison 9/22/98

END OF NOTE

ORIG. SENT TO:KEGK300

COPIES SENT TO: ZASH300 VAKA300 BAKG30 CSHE300

Exhibit D – Page 19 of 28

A-19 State of Washington REVENUE REFUND	Agency No.	Location Code
	3000	

AGENCY NAME
Department of Social & Health Services OAS/Trust Fund Unit PO Box 9501 Olympia, WA 98507-9501
CLAIMANT
~~xxxx~~ Associated Counsel for the Accused, for ~~xxxxxxxxxxx~~ ~~xxxxxxxxxxxxxxxxxxxxxxxxxxx~~

Date	Description	Amount	Agency Use
	TO TRANSFER FUNDS FROM THE TRUST FUND ACCOUNT OF ~~xxxxxxxxxxxxxxx~~ FOR SCHOOL CLOTHES AND HAIRCUT.	$465.00	2000

Prepared By	Tele. #	Date	Agency Approval	Date
SHERYL CHOATE			//s//Karen Kegley-Justinen	9/22/98

Dos. Date	Print Run Date	Current Doc. No.	Reference Doc. No.	Vendor Number	Vendor Message	UBI Number
9-22-98		TRU		VOD1	~~xxxxxxx~~	

Trans Code	Program Index	Source	Amount	Invoice
198	A0000	410000	$465.00	TRUSTEE

Account Approval For Payment	Date	Warrant Total	Warrant Number
		$465.00	

Exhibit D – Page 20 of 28

A-19 State of Washington REVENUE REFUND	Agency No.	Location Code
	3000	

AGENCY NAME
Department of Social & Health Services OAS/Trust Fund Unit PO Box 9501 Olympia, WA 98507-9501
CLAIMANT
~~xxxxxxxx~~ ~~xxxxxxxxx~~ ~~xxxxxxxxxxxx~~

Date	Description	Amount	Agency Use
	TO TRANSFER FUNDS FROM THE TRUST FUND ACCOUNT OF ~~xxxxxxxxxxxxxx~~ Account Balance	$3,408.50	3500

Prepared By	Tele. #	Date	Agency Approval	Date
SHERYL CHOATE			//s//Karen Kegley-Justinen	10/1/98

Dos. Date	Print Run Date	Current Doc. No.	Reference Doc. No.	Vendor Number	Vendor Message	UBI Number
10-1-98		TRU		VOD1	~~xxxxxxx~~	

Trans Code	Program Index	Source	Amount	Invoice
198	A0000	410000	$3,408.50	TRUSTEE

Account Approval For Payment	Date	Warrant Total	Warrant Number
		$3,408.50	

Exhibit D – Page 21 of 28

READMAIL Read Mail For: KEGK300 SYSMRVW SYSMRVWM

From : PAKI300 KIMBERLY PANOS
Subject: ~~xxxx xxxx~~ Date: 09/29/1998 Time: 11:08 AM
Copy : Forwarded: Read: Reply:

Hi Karen – Please forward ~~xxx~~ remaining TF Account balance * to him at ~~xxxx xxxxxxxx-xxxx xxxxx xxxxx~~, ~~xx~~. He is no longer in the custody of DSHS. Thx, Todd for Kim

END OF NOTE

ORIG. SENT TO : KEGK300
COPIES SENT TO: PAKI300

Forward to ID: ____ Attachment: Y Forward Acknowledgement: __ (Y or Blank)

[hand-written note]

TOTAL BALANCE

$3408.50

Exhibit D – Page 22 of 28

A-19 State of Washington REVENUE REFUND	Agency No.	Location Code
	3000	

AGENCY NAME
Department of Social & Health Services OAS/Trust Fund Unit PO Box 9501 Olympia, WA 98507-9501
CLAIMANT
GAGE, RAY for ELIZABETH GAGE 21330B 9th AVE SE BOTHELL, WA 98021

Date	Description	Amount	Agency Use
1646351	TO TRANSFER FUNDS FROM THE TRUST FUND ACCOUNT OF ELIZABETH D. GAGE, 013082. EXCESS CHILD SUPPORT BALANCE	$49.63	3500

Prepared By	Tele. #	Date	Agency Approval	Date
SHERYL CHOATE			//s//Karen Kegley-Justinen	9/28/99

Dos. Date	Print Run Date	Current Doc. No.	Reference Doc. No.	Vendor Number	Vendor Message	UBI Number
9-28-99		TRU		VOD1	GAGE	

Trans Code	Program Index	Source	Amount	Invoice
198	A0000	410000	$49.63	TRUSTEE

Account Approval For Payment	Date	Warrant Total	Warrant Number
		$49.63	

Exhibit D – Page 23 of 28

Justinen, Karen

From: Heath, Marion
Sent: Monday, September 27, 1999 2:31 PM
To: Justinen, Karen
Cc: Heath, Marion
Subject: RE: Elizabeth Gage 1646351

lelizabeth's father, to whom she returned after placement is:-

Ray Gage
21330B 9th Ave SE
Bothell, WA 98021

---Original Message---
From: Justinen, Karen
Sent: Thursday, September 23, 1999 12:54 PM
To: Fosty, Tracy
Cc: Justinen, Karen
Subject: Elizabeth Gage 1646351

It appears that this client left care in 6/99. If this is correct, please provide me with the custodial parent's name and address so we can send the trust fund balance of $49.23 to them. Thank you.

[2 hand-written notes]

Please send child support bal to [Ray Gage]

balance
$49.63

Exhibit D – Page 24 of 28

A-19 State of Washington REVENUE REFUND	Agency No.	Location Code
	3000	

AGENCY NAME
Department of Social & Health Services OAS/Trust Fund Unit PO Box 9501 Olympia, WA 98507-9501
CLAIMANT
GAGE, ELIZABETH 2115 TAYLOR #2 BELLINGHAM, WA 98225

Date	Description	Amount	Agency Use
1646351	TO TRANSFER FUNDS FROM THE TRUST FUND ACCOUNT OF ELIZABETH D. GAGE, 013082. ACCOUNT BALANCE	$1,254.94	2000 (SSA)

Prepared By	Tele. #	Date	Agency Approval	Date
SHERYL CHOATE			//s//Karen Kegley-Justinen	11/15/99

Dos. Date	Print Run Date	Current Doc. No.	Reference Doc. No.	Vendor Number	Vendor Message	UBI Number
11-15-99		TRU		VOD1	GAGE	

Trans Code	Program Index	Source	Amount	Invoice
198	A0000	410000	$1,254.94	TRUSTEE

Account Approval For Payment	Date	Warrant Total	Warrant Number
		$1,254.94	

Exhibit D – Page 25 of 28

Choate, Sheryl

From: marilynn.harder@ssa.gov[SMTP:marilynn.harder @ssa.gov]
Sent: Monday, November 15, 1999 5:27 AM
To: Choate, Sheryl
Subject: Re[2]: FE: elizabeth Gage

text file
RFC822.TXT

Thx Sheryl, yes go ahead and forward the money to Elizabeth. The 11/99 payment should have gone to her. The payee was changed 10/19/99. Let me know if questions-thx-mh

_____Reply Separator_____

Subject: RE: FW: elizabeth Gage
Author: "Choate Sheryl" <CHOATSL@dshs.wa.gov> at ##internet
Date: 11/15/99 8:53 AM

539-66-8115C1.....

> ---------
>From: marilynn.harder@ssa.gov{SMTP:marilynn.harder @ssa.gov]
>Sent: Monday, November 15, 1999 4:16 AM
>To: Choate, Sheryl
>Subject: Re: FW: elizabeth Gage

>
<<File: Cute_ghost.gif><<File: RFC822.TXT>>
> Do you have her SSN or claim number? thx-marilynn
>
>_____Reply Separator_____

>Subject: FW: elizabeth Gage
>Author: "Choate Cheryl" <CHOATS@dshs.wa.gov> at ##internet
>Date: 11/10/99 10:58 AM
>
>Hi Marilynn,
>Ok to forward tf bal $1254.94 directly to her? Will we
>receive the Nov ck?
>
>>-----
>>From: Burgamy, Chuck
>>Sent: Friday, October 29, 1999 4:23 PM
>>To: Choate, Sheryl
>>Subject: elizabeth Gage
>>
>><<Cute_ghost.gif>>
>>Hi
>>SSA has made Elizabeth her own payee..She
>>would like her balance sent to her place in
>>Bellingham. Thanks
>>
>>Chuck Burgamy
>>360 416 7258

date stamp
10-29-99

Social Security Administration
Retirement, Survivors and Disability Insurance
Important Information

Office of Central Operations
1500 Woodlawn Drive
Baltimore, Maryland 21241-1500
Date: October 26, 1999
Claim Number: 539-66-8115HC1

SECY DSHS FOR
ELIZABETH D GAGE
PO BOX 9501
OLYMPIA, WA 98507-9501

We have decided that it would be best for ELIZABETH D GAGE to have her checks sent to another payee.

If You Saved Any Money

While you were ELIZABETH D GAGE'S payee, you may have saved some money for her. If you have, you should return it to us unless you have already made other plans with us for handling it. The money you will need to return includes:

- Saved and invested benefits.
- Interest earned from these savings and investments.
- Money you have left over from any checks we sent you.
- Any checks you might receive after the date of this letter.

Exhibit D – Page 28 of 28

How To Pay Us Back

To do this, you can write us a check or money order. Make it out to the Social Security Administration. Be sure to write "Conserved Funds for ELIZABETH D GAGE, 539-66-8115HC1" on that check or money order. Please mail it in the enclosed green envelope.

Enclosure(s):
Refund Envelope PC 5
539-66-8115HC1

If You Have Any Questions

If you have any questions, you may call us toll-free at 1-800-772-1213, or call your local Social Security office at 1-360-753-9451. We can answer most questions over the phone. You can also write or visit any Social Security office. The office that serves your area is located at:

SOCIAL SECURITY
402 YAUGER WAY SW
OLYMPIA, WA 98502

If you do call or visit an office, please have this letter with you. It will help us answer your questions. Also, if you plan to visit an office, you may call ahead to make an appointment. This will help us serve you more quickly when you arrive at the office.

/s/

W. Burnell Hurt
Associate Commissioner for
Central Operations

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF OKANOGAN

GUARDIANSHIP ESTATE OF DANNY KEFFELER, by WANDA PIERCE, Guardian, and other persons similarly situated, Plaintiffs, v. STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Defendant, And LYLE QUASIM, DIRECTOR OF THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES; AND MICHAEL R. HOBBS, PROGRAM MANAGER FOR DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Additional Defendants.	NO. 96-2-00157-2 SUPREME COURT NO. 67680-1 AFFIDAVIT OF TAMARA ERICKSON

STATE OF WASHINGTON)
: ss.
County of Thurston)

TAMARA ERICKSON, being first duly sworn on oath, deposes and says:

1. My name is Tamara Erickson. I am the Chief of the Office of Federal Funding in the Children's Administration in the Department of Social and Health Services (DSHS). The Children's Administration is responsible for child protective, child welfare, family reconciliation and licensing services through forty-four local offices in six (6) geographic regions in Washington State. This includes foster care services for those children who can not remain in their own home as a result of abuse or neglect issues. As Office Chief, I am responsible for policies, procedures and activities regarding federal funding used to support Children's Administration's programs and staff.

2. RCW 74.13 states that the purpose of child welfare services is to safeguard, protect and contribute to the welfare of the children of the state. This includes social services and facilities for children who require guidance, care, control, protection, treatment or rehabilitation. Child Welfare Services include child protection, placement prevention, permanency planning, and placement services (foster care), and other services to children and families who may need services due to serious chronic issues, including children and youth who are abused or neglected, medically fragile, or without family resources. A child may not be able to safely remain in his or her own home. If so, foster care is available. Foster care includes receiving care for emergency 24-hour placements, family foster care and residential treatment services (group care or therapeutic foster care services).

3. The foster care budget includes funds for out-of-home placement as well as for foster parent

supports, foster parent liability insurance, employed foster parent child care, foster parent recruitment and retention, foster parent training, foster parent respite and other supporting services for foster homes. This budget also contains supporting funding for some specialized services for foster children such as Medicaid personal care services, child placing agency fees for case management of children in the care of private child placing agencies, supervised visitation and transportation for the child, intensive foster care assessments, Passports (an automated, health and education record-keeping and tracking system for children in out-of-home care for more than 90 days), psychological assessments and treatment, and other specialized supports to foster children.

4. Paragraph 2a of the Supreme Court's Order on Remand (paragraph 3(a) of the trial courts' Scheduling Order) requests that DSHS provide the number of foster care children in the State's custody pursuant to RCW 74.13. In September 1999, the Children's Administration had approximately 12,930 children in out-of-home care. However, not all of these children are in the State's custody. Some children may be in the custody of a private child-placing agency (licensed by the Children's Administration) or in the custody of a Tribe or Tribal child-placing agency. The Children's Administration may still be responsible for providing the funding for their maintenance and care but the custody does not reside with the State. Of these 12,930 children, 10,578 were in the custody of the Children's Administration. The remaining 2,352 were in the

custody of another organization, or joint custody with the department and another organization, etc.

5. Over the last four years Children's Administration has refined our reporting of the number of children in out-of-home placement. As a result, the number of out-of-home placements is higher than the number included in Mr. Richard Anderson's affidavit submitted to this court in March 1997. Children's Administration currently includes all children in out-of-home placement, including children who are in the care of a relative but the child is in the State's custody, and those children for whom the State does not have custody but is financially responsible. I chose to use monthly data rather than a specific date or a yearly average. I believe this will give the most accurate information possible. I also chose to use September 1999 rather than the current month to accommodate any time lag historically observed when extracting this type of data from the Children's Administration's automated information system.

6. Paragraph 2b of the Supreme Court's Order on Remand (paragraph 3(b) of the trial courts' Scheduling Order) requests that DSHS provide the number of foster care children described in paragraph 4 who receive social security benefits. Of those 12,930 children, approximately 1,480 were also beneficiaries of a Social Security payment in the month of September 1999. Approximately 923 were Title XVI, Supplemental Security Income (SSI) recipients, approximately 469 were Title II (SSA) recipients, and approximately 88 received SSI and SSA benefits concurrently. Because the Case and Management Information System (CAMIS) is not a

static system, and I chose a point in time for the data, I am relying on the Division of Finance's information regarding the number of children receiving benefits for which DSHS is the representative payee. In addition, Children's Administration staff manually reviewed CAMIS information in order to include children in the care of the Children's Administration for which DSHS is not the representative payee. Nevertheless, an approximation is the best we are able to identify.

7. Paragraph 2d(iii) of the Supreme Court's Order on Remand (paragraph 3(d)(iii) of the trial courts' Scheduling Order) requests that DSHS provide whether, and how, Social Security payments the State receives as representative payee are "passed through" to the foster parents of the beneficiary children. The Children's Administration provides reimbursement for a foster parent, from whatever funding source, for the expenses they have incurred to provide care for that child. Whether the source of the funding for foster care maintenance is Title IV-E funds matched with state funds, Temporary Assistance to Needy Families (TANF) funding, or SSI or SSA funds, the state must pass that funding on to the foster parent who actually provides the care for that child. The Children's Administration does not normally purchase food, clothing, and shelter directly for a child because it would be administratively impractical.

8. Paragraph 2e of the Supreme Court's Order on Remand (paragraph 3(e) of the trial courts' Scheduling Order) requests that DSHS provide a detailed explanation of the services DSHS provides on behalf of foster care children in its capacity as

representative payee. Prior to applying to the Social Security Administration to serve as representative payee, the Children's Administration identifies all children in the foster care system who may have a significant mental or physical impairment that would make them eligible for SSI benefits. We also must apply on behalf of any child who is eligible for SSA benefits as required by 20 CFR 416.210. If staff believe the child may be eligible for SSI, the staff submits an application to the Social Security Administration. If staff believe a denial of eligibility is erroneous, they will appeal on behalf of the child.

9. If the child's claim for social security benefits is allowed, as representative payee the Secretary of DSHS through the Children's Administration provides a number of services on behalf of the foster children. Children's Administration staff are responsible for monitoring a child's service needs, including food, clothing, shelter, therapy, child care (specialized or regular), special dietary needs, any special equipment the foster parent may need to care for the child, or any other special needs the child has through the child's case plan. Children's Administration is required to do an Individual Service and Safety plan for each child in our care. This plan addresses the child's needs and where the child should live. This plan also addresses the child's permanent placement (either returning home to their parents (reunification) or another plan such as adoption or guardianship if reunification is not possible) and what the parents must do in order to achieve reunification.

10. Staff are also responsible for maintaining the child's eligibility for SSI benefits by monitoring the amount of benefits available on a child's behalf. If resources are available beyond the monthly cost of foster care, staff will identify additional service needs and will purchase those services for the child.

11. If the child's social worker identifies additional services or needs beyond basic food, clothing and shelter, the social worker may recommend that the child's monthly social security benefits be used to pay for those needs or services in addition to, or instead of, basic foster care maintenance. The DSHS will give priority to the special needs when it is consistent with the social security regulations and when it is in the child's best interest.

12. SSI financial redeterminations are completed by Children's Administration staff who interview the social worker, child, foster parent and/or guardian. Financial redeterminations are required by the Social Security Administration to determine continued income eligibility. There are several different types of redetermination forms used by the Social Security Administration depending on whether or not the child is flagged by the Social Security Administration as likely to have changes to their record, such as frequent moves and wages or other sources of income.

13. Children who receive SSI benefits are required by the Social Security Administration to have completed Continuing Disability Reviews (CDR). Staff complete CDRs approximately every three years and then again just before they turn 18.

If a CDR is not completed, the child's SSI benefits are terminated by the Social Security Administration.

14. Staff reports to the Social Security Administration any changes to the child's income that will affect the SSI payment amount or continuing SSI eligibility (i.e., wages, child support payments, etc.). For example, Children's Administration receives a list from the DSHS Division of Child Support which match children receiving an SSI benefit with those for whom the Division of Child Support received a child support payment. The Children's Administration reports these child support collections to the Social Security Administration as income which could lower the child's SSI benefits. Staff also notifies the Social Security Administration regarding changes in circumstance of child (change of address, change in custody, on the run, etc).

15. The staff complete the reports and forms required by the Social Security Administration for SSA benefits. For example, the staff prepares Beneficiary Recontact Reports which track beneficiaries marital status, and student statement forms which track school attendance for continued eligibility.

16. Staff complete Disabled Adult Child (DAC) claims for those children receiving both SSA and SSI benefits or children receiving SSA who may be eligible for SSI. The Disabled Adult Child program allows a child, under certain circumstances, to receive benefits under SSA beyond their 18th birthday.

17. Staff assist 18 year olds, parents, adoptive parents, foster parents and/or guardians in accessing dedicated account funds.

18. Staff make necessary arrangements with the new custodian or the 18 year old to facilitate reunification or emancipation. Some children would be unable to return home or live independently without a source of income. With proper planning between staff and the child or custodian, SSI eligibility may be preserved with benefits available after the child leaves foster care. If the child is eligible for SSA, staff advise the new custodian or the 18-year-old on how to apply to the Social Security Administration to become the new representative payee.

19. Staff complete adoption support screenings for SSI eligible children. Children who are eligible for SSI are also eligible for medical benefits under COBRA (Consolidated Omnibus Budget Reconciliation Act). This is an important service because families outside of Washington State adopt some children, or the adoptive family may move to another state. COBRA allows reciprocal medical coverage in other states that may not be available otherwise.

20. Paragraph 5 of the trial court's Scheduling Order requests that DSHS provide information about federal programs under which the State receives reimbursement and/or matching funds for its cost of providing foster care. Title IV-E funding is available to states under the Social Security Act to provide federal matching funds for foster care maintenance, adoption assistance payments, administrative and

training costs in support of the effective and efficient administration of these programs. Title IV-E is the most complicated funding source used in child welfare. This funding not only has an income eligibility component, it has strong programmatic and practice rules that must be followed in order to attain and maintain eligibility for a child. Eligible cases are reviewed every six months to check various eligibility factors such as income and resources and proper documentation in the case and court records of required child welfare practices. Currently, Title IV-E funding is estimated to be approximately 24% of the total state fiscal year 2000 foster care budget (including the state matching funds).

21. In addition to meeting the Title IV-E requirements, the State of Washington is also required to submit the Comprehensive Child and Family Services Plan (see Exhibit A) to assure the federal government that the State follows the requirements established under Title IV-B of the Social Security Act (first established in 1935 and as amended most recently under the Adoption Safe Families Act of 1997) in order for a child to be eligible for any foster care or adoption assistance funding under Title IV-E. Requirements such as reasonable efforts to prevent placement, continued court review of the steps taken to achieve the child's permanent plan, continued court review to assess whether the reasons for dependency are still valid, and other child welfare practices must be followed in order to establish and maintain the State's eligibility for Title IV-B and subsequently Title IV-E funding.

22. The state submits a Title IV-E state plan (see Exhibit B) to the federal Department of Health

and Human Services, Administration for Children and Families documenting how we will comply with all Title IV-E requirements. Children's Administration staff determine Title IV-E eligibility for each child in out-of-home placement resulting in the Title IV-E claim for eligible maintenance payments, administrative and training activities which is submitted through the Division of Finance in the Department of Social and Health Services on a quarterly basis.

23. Title IV-E foster care maintenance payments have the same Federal Financial Participation rate (FFP) as Medicaid (Title XIX). Currently in Washington State for federal fiscal year 2000 that rate is 51.83%. This funding is only available for Title IV-E eligible children. The State establishes the child's eligibility based on federal rules and policies. In order to be eligible for Title IV-E, a child must have been removed from a home that was, or would have been, eligible for Aid to Families with Dependency Children (AFDC) according to the State's AFDC eligibility criteria as of July 16, 1996, and the child must have been living with their parent(s) or another relative of specified degree within the six months prior to removal. (In September 1999, Washington State averaged 36.62% of paid foster care placement days from Title IV-E eligible children.)

24. Title IV-E is an income-based program. If a child receives other federal or federally mandated resources or benefits in the same month as Title IV-E funds are claimed on behalf of a child, the IV-E amount claimed by the State must be reduced on a dollar for dollar basis by the other benefits.

Examples of other federal benefits that affect Title IV-E are child support and SSA. Social Security Administration policies have precluded the State from receiving, or ever claiming, Title IV-E funds on behalf of a potentially SSI eligible child for which the Children's Administration submitted an SSI application. Staff must determine which funding source is in the best interests of the child and the department. For this reason, the State has not always sought Title IV-E funding for those children who may also be SSI eligible. If SSI eligibility could be maintained if the child is returned home, in the guardianship, or other permanent plan, the department may forgo Title IV-E. In a case where the cost of the child's care is high, this can be a significant amount of reimbursement. Title IV-E funding does not cover therapy or treatment for the child, respite for the foster parent, most child care for the child or exceptional non-maintenance costs.

25. In addition to the income and resources and other AFDC criteria for eligibility, the State must document to the court that reasonable efforts were made to prevent the placement and that continuing to reside in their own home is contrary to the welfare of the child. The state must continue to make reasonable efforts to reunify the child with his or her family or document why those reasonable efforts are not necessary. Also, the court must award sole custody of the child to the State in order for a child to be Title IV-E eligible. If the State has joint custody of the child with another agency or the Tribe or private child placing agency has custody of the child, the child will not be Title IV-E eligible unless the State maintains a Title IV-E agreement,

sanctioned by the federal government, with that Tribe or agency. If all these efforts are not made and properly documented for the court, including documentation in the court record, the child will lose Title IV-E eligibility. According to the State's Title IV-E plan, if the child continues in placement 12 months or longer, the court must review the permanency plan for that child and document in case and court records that reasonable efforts are being made to achieve the child's permanent plan. If the child remained in care 15 out of the last 22 months, the Children's Administration must review the case for termination of parental rights. If staff do not file for termination of parental rights, staff must document why they do not believe this step is in the best interests of the child and why it is in the best interests of the child to have an alternative permanent plan.

26. In addition to Title IV-E, the Children's Administration received Title IV-A of the Social Security Act, Comprehensive Emergency Assistance Program funding prior to passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). The Children's Administration continues to receive a portion of the State's TANF block grant for foster care services, including foster care maintenance, for eligible children. Eligibility is determined by Children's Administration staff according to criteria established with the federal agency in our State's plan prior to September 1996. TANF funds do not require a state match. The Children's Administration does not claim TANF funds on behalf of children who are eligible for, and receiving, SSI or Title II benefits.

The plan for TANF funds is submitted by the Economic Services Administration in the Department of Social and Health Services. Funds are claimed by the Division of Finance in the Department of Social and Health Services. Currently, TANF is estimated to be 5.6% of the total foster care budget for state fiscal year 2000.

27. Another federal funding source is Title XIX. Title XIX funding is a federal funding program mainly providing medical services. It is matched (with state funding) at the same Federal Financial Participation rate (FFP) as Title IV-E referenced before. Currently in Washington State for federal fiscal year 2000, that rate is 51.83%. Title XIX, through the Medical Assistance Administration in the Department of Social and Health Services, provides medical coverage for all children in foster care.

28. Three discrete programs are also funded by Title XIX in the Children's Administration's foster care budget. Title XIX Targeted Case Management funds a portion of the private child placing agency's case management fee when the State contracts with a private child placing agency to provide some of the case management activities State staff would otherwise provide for a child in foster care. Title XIX Behavior Rehabilitation Services funds some discrete treatment activities for children in group care or therapeutic foster care as outlined in our state plan amendment for Children's Administration's Behavior Rehabilitation Services. Title XIX Assistance is used to fund actual health care practitioner activities under the Children's Administration's Passport program (an automated, health and education

record-keeping and tracking system for children in out-of-home care for more than 90 days). SSI and SSA benefits are not used towards any of these costs.

29. Title XIX funding is estimated to be approximately 25% of the total foster care budget for state fiscal year 2000 (including the state match). Eligibility for Medicaid is determined by the Medical Assistance Administration for all children in foster care. The Medical Assistance Administration is responsible for the Medicaid State Plan. The Division of Finance is responsible for Medicaid claiming on a quarterly basis.

30. Still another source of federal funding is Title IV-B subpart 2, Family Support and Family Preservation Services. This funding was added to child welfare as a subpart of the general Title IV-B child welfare services funding specifically to address family support, family preservation, adoption promotion and support, and time limited reunification services. This funding is a block grant that requires a 25% state fund match. It is used to partially fund Intensive Foster Care Assessments a contracted program that provides a multi-disciplinary assessment for youth in foster care where no permanent placement has been identified and the Supervised Visitation program, a contracted program that facilitates visits between children in foster care and their biological families while attempting reunification. Individual eligibility is not required. SSI and SSA benefits are not used towards either of these costs. Title IV-B subpart 2 funding is estimated to be approximately 1% of the total foster care budget for state fiscal year 2000 (including the state match). The Children's Administration is

responsible for the Comprehensive Child and Family Services State Plan (which includes the Title IV-B subpart 2). See Exhibit A. The Division of Finance is responsible for Title IV-B subpart 2 claims.

31. Finally, Child Care and Development Fund (45 CFR 98 and 99) is also a federal funding source in the foster care budget. Section 103(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) repealed the child care programs authorized under Title IV-A of the Social Security Act and unified them under the Child Care and Development Block Grant (CCDBG). The integrated entitlement and discretionary child care funding has a single, unified purpose and has been named the Child Care and Development Fund (CCDF). The Children's Administration funds Employed Foster Parent Child Care partially with CCDF funding. This program pays for child care to support the foster parent's or non-needy relative care taker's employment. The Children's Administration applies for this funding through a state plan submitted by the Office of Child Care Policy. Eligibility for the program is determined by the child's social worker. The funds are claimed by the Division of Finance in the Department of Social and Health Services. This funding is estimated to be approximately 3.9% of the total foster care budget for state fiscal year 2000.

32. Paragraph 5(b) and 5(c) of the trial courts' Scheduling Order requests DSHS to identify all persons by name, address, telephone number, job title and job description that are in charge of preparing applications for said federal funds and accounting in connection therewith. The way in

which the state qualifies for all of the above federal funding is to submit for approval the required state plans. The State does not submit individual applications on behalf of children in foster care for any federal funding source with the exception of SSI, SSA, Veteran's Administration Benefits, and Railroad Retirement Benefits.. Individual eligibility is determined using federal rules and regulations by DSHS staff in the designated programs and documentation of eligibility is retained in the child's case file. Funds are accounted for through the DSHS automated cost allocation system in the Division of Finance. Funding is not claimed through the system on an individual client basis. However, the DSHS Social Service Payment System does retain the type of funding used to pay for a child's cost of care for audit purposes. Based on the automated cost allocation system, expenditures are reported to the respective federal funding agencies through federal expenditure reports. These reports also recognize any reimbursement of previously claimed federal expenditures. The associated federal revenue is then obtained on a scheduled basis in accordance with the Cash Management Improvement Act.

33. In preparing this affidavit, I relied on the Comprehensive Child and Family Services' Plan, the Title IV-E State Plan, the Federal Funding SSI Facilitator Desk Guide, and a customized report to identify case counts extracted from CAMIS.

//s//

_____

TAMARA ERICKSON
Chief, Office of Federal Funding

Management Services Division
Children's Administration
PO Box 45710
Olympia, Washington 98504-5710
(360) 902-7920

SUBSCRIBED AND SWORN TO before me this 14th day of January, 2000.

//s//

Sandra Hintz
NOTARY PUBLIC in and for the State of Washington. My commission expires: 6/1/00

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF OKANOGAN

GUARDIANSHIP ESTATE OF DANNY KEFFELER, by WANDA PIERCE, Guardian, and other persons similarly situated, Plaintiffs, v. STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES And DEPARTMENT OF LICENSING; Defendant, And LYLE QUASIM, DIRECTOR OF THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, AND MICHAEL R. HOBBS, PROGRAM MANAGER FOR SOCIAL AND HEALTH SERVICES, Additional Defendants.	Okanogan County No. 96-2-00157-2 Supreme Court No. 67680-1 AFFIDAVIT OF ROBERT COVINGTON

STATE OF WASHINGTON)
ss.
County of Thurston)

ROBERT COVINGTON, being first duly sworn on oath, deposes and says:

1. My name is Robert Covington. I am the Office Chief for the Office of Accounting Services (OAS), Finance Division, Department of Social and Health Services (DSHS). I am responsible for the centralized accounting activities of DSHS. As Office Chief, I oversee the management of the Trust Fund Unit.

2. Paragraph 11 of the trial court's Order Directing Defendant to Produce Additional Documents directs the department to "provide a statement describing its policy and practice regarding how child support collections applied by the Division of Child Support to reimburse for foster care expenses affect the department's authority, exercised by the Trust Fund Unit when acting as a child's Representative Payee, to use a child's SSI or SSA benefits to pay for those same, or different, foster care expenses. To the extent available, the department shall provide a record or sample accounting evidencing how its policy or practice impacts class member children." I am authorized to speak on behalf of DSHS on this issue, and this affidavit responds.

3. The agency provided information regarding the use of parental child support to pay towards the child's foster care, and how it accounts for distribution over expenditures in the January 14, 2000 affidavits of Alan Rhoten and Karen Kegley Justinen. This affidavit supplements those to assist the court to better understand the department's overall policy.

4. As explained in the affidavits of Alan Rhoten and Karen Kegley Justinen, dated

January 14, 2000, the Division of Child Support (DCS) is responsible for the comparison of parental child support payments to the amount of foster care paid and subsequent reimbursement to DSHS, while OAS is responsible for the comparison of Social Security funds to the amount of foster care paid and the subsequent reimbursement to DSHS. The department does not currently have a formal written policy addressing how child support collections applied by the Division of Child Support to reimburse for foster care expenses affect the department's authority, exercised by the Trust Fund Unit when acting as a child's Representative Payee, to use a child's SSI or SSA benefits to pay for those same, or different, foster care expenses.

5. However, it is the department's understanding of the law as it applies to this situation that both parental child support and Social Security benefits are available and intended to be used for the support of a child in foster care. The department believes it is lawful and appropriate for the agency to apply parental child support collections to pay all reimbursable foster care expenses. The department further believes that, when acting under the authority of the Social Security Administration's designation as the child's representative payee, it is lawful and appropriate for the agency to apply a child's SSI or SSA benefits to pay all reimbursable foster care expenses. The department believes it may lawfully and appropriately use both sources to pay for the total costs of reimbursable foster care actually incurred maintaining the child in foster care.

6. The department does not, however, take the position that it is lawful and appropriate to retain any foster child's parental child support payments or Social Security benefits which would exceed the total reimbursable costs of maintaining that child in foster care. On the contrary, it is the policy of the department to comply with all laws and regulations governing the programs it administers, and to deposit excess child support or excess social security benefits in an interest bearing account. Thus, it is the policy of the department to limit the total amount of parental child support, SSI and SSA benefits retained to pay for foster care to the total amount of reimbursable foster care costs expended on that child.

7. The computer system used by DCS, the Support Enforcement Management System (SEMS), is a different system than that used by the Children's Administration (CAMIS) and the Trust Fund Unit (TFS). It is presently beyond the capability of these systems to automatically compare parental child support collections used to pay for a child's reimbursable foster care costs with the SSI or SSA benefits used for the same purpose. Currently, it is only possible to do such a comparison manually, and on a case-by-case basis. The department will investigate any accounts brought to our attention that there is a concern or potential for excess reimbursement of the child's cost of care.

8. Although the comparison and reimbursement for foster care costs from child support and social security funds are being done independent of each other, I am confident that, in the vast majority of cases, the total reimbursement to

DSHS does not exceed the total amount of care paid by the department for a child. My confidence is based on the fact that the high cost of foster care for this group of children will, in the vast majority of cases, significantly exceed the total amount of parental support and social security benefits available to pay for the child's foster care. Also, the possibility that both parental child support and SSI benefits could be retained in an amount in excess of the total cost of foster care provided is made even more remote because the department reports parental child support collected on behalf of a SSI eligible child to the Social Security Administration as income. If the child support payments are very much, and are being paid regularly, the Social Security Administration will reduce or terminate SSI payments. It is also supported by the review performed by the Trust Fund Unit Supervisor (Karen Justinen) of the 50 random trust fund cases.

9. Although it is unlikely that DSHS has reimbursed for amounts exceeding the cost of reimbursable foster care in more than a very few, extraordinary cases, the department recognizes that improvements to the procedures and systems related to the accounting for client funds must be made. Given this, staff have been working toward this objective over the past year. Our goal is to centralize the accounting functions for the Trust Fund Clients within the Trust Fund Unit. Although it may be perceived to have taken a significant amount of time to make progress toward this goal, it must be recognized that there are complexities that must be adequately addressed prior to implementing changes. The following are some of the complexities

that DSHS has faced in making changes to the existing process:

a) The existing Trust Fund System was created in the early 1980's to support the accounting requirements for approximately 700 trust fund accounts. This system will not support the additional 10,000 child support cases anticipated to be transferred to the Trust Fund Unit. A new system must be developed to handle the increased volume clients.

b) There are differences in the current accounting methods utilized by DCS and the Trust Fund Unit. Specifically the application of payment to a given month of service is different for SSA and SSI as compared to child support.

c) There are limitations in the data available from other systems. The Support Enforcement Management System (SEMS) has limitations in its ability to provide support information when the support order includes more than one child.

10. In summary, the Office of Accounting Services has partnered with the Division of Child Support and the Children's Administration to make the necessary changes to centralize the accounting function for the Trust Fund Clients. We have made progress in this effort over the past year and will continue until we have the necessary changes to procedure and systems that are necessary to routinely and automatically compare parental child support collections used to pay for a child's reimbursable foster care costs, with the SSI or SSA benefits used for the same purpose. However, it is important to recognize that the relatively high cost of

foster care will, in the vast majority of cases, significantly exceed the total amount of parental support and social security benefits available to pay for the child's foster care.

//s//

ROBERT COVINGTON

SUBSCRIBED AND SWORN TO before me this 25th day February of ~~January~~ 2000.

//s//

Laurie Carley
NOTARY PUBLIC in and for the State of Washington. My commission expires: 01-31-03

This page intentionally left blank.

50 RANDOM ACCOUNTS
BLIMKA, NACOLE

SOCIAL SECURITY ACCOUNTING

Last Name	BLIMKA
First Name	NACOLE
MI	A
SSN	~~xxxxxxxxx~~
DOB	1/1/81
Funding Source	SSI

Payments Received	$10,916.00
Interest Earned	$0.00
Payments Returned	$3,003.30
Account Disbursements	$0.00
Foster Care Reimbursement	$7,912.70
Balance	$0.00

Wednesday, January 05, 2000

REPORT DATE: 04/08/98
PURGE DATE:01/01/98
PAGE: 1

----- DEPARTMENT OF SOCIAL AND HEALTH SERVICES -----
----- OFFICE OF ACCOUNTING SERVICES -----
----- TRUST FUND SECTION -----
PURGE REPORT FOR THE CLIENT TRUST FUND TRANSACTIONS

CLIENT: BLIMKA, NACOLE A
PIC: BLIMKNA010181A

DATE	DOCUMENT	NUMBER	TRANS	REV	DESCRIPTION	DEBIT	CREDIT	BALANCE
07/23/97	D.C.R.	156	01-00	5000	03/97	491.55	0.00	491.55 DB
07/23/97	D.C.R.	156	01-00	5000	04/97	491.55	0.00	983.10 DB
07/23/97	D.C.R.	156	01-00	5000	05/97	491.55	0.00	1474.65 DB
07/23/97	D.C.R.	156	01-00	5000	06/97	491.55	0.00	1966.20 DB
07/23/97	D.C.R.	156	01-00	5000	07/97	491.55	0.00	2457.75 DB
08/05/97	J.V.	00202	10-10	5000	IAR REIMBURSE	0.00	1966.20	491.55 DB
08/06/97	D.C.R.	166	01-00	5000	08/97	491.55	0.00	983.10 DB
09/03/97	D.C.R.	181	01-00	5000	09/97	491.55	0.00	1474.65 DB
10/02/97	D.C.R.	197	01-00	5000	10/97	491.55	0.00	1966.20 DB

10/15/97	J.V.	09351	01-01	5000	08/97	0.00	983.10	983.10 DB
11/05/97	D.C.R.	214	01-00	5000	11/97	491.55	0.00	1474.65 DB
11/14/97	J.V.	11421	01-01	5000	09/97	0.00	491.55	983.10 DB
12/04/97	D.C.R.	230	01-00	5000	12/97	485.45	0.00	1468.55 DB
12/31/97	J.V.	01674	01-01	5000	10/97	0.00	491.55	977.00 DB

REPORT DATE: 04/08/98
PAGE: 1

----- DEPARTMENT OF SOCIAL AND HEALTH SERVICES -----
----- OFFICE OF ACCOUNTING SERVICES -----
----- TRUST FUND SECTION -----
PURGE REPORT FOR THE CLIENT TRUST FUND TRANSACTIONS

CLIENT: BLIMKA, NACOLE A
PERSON ID: 477962
PIC: BLIMKNA010181A

DATE	DOCUMENT	NUMBER	TRANS	REV	DESCRIPTION	DEBIT	CREDIT	BALANCE
01/01/98	D.C.R.	00000		5000	BAL FWD	977.00	0.00	977.00 DB
01/05/98	D.C.R.	248	01-00	5000	01/98	500.55	0.00	1477.55 DB
01/15/98	J.V.	02054	01-01	5000	11/97	0.00	491.55	986.00 DB
02/04/98	D.C.R.	264	01-00	5000	02/98	500.55	0.00	1486.55 DB
02/13/98	J.V.	02325	01-01	5000	12/97	0.00	485.45	1001.10 DB
03/04/98	D.C.R.	279	01-00	5000	03/98	500.55	0.00	1501.65 DB
03/13/98	J.V.	25371	01-01	5000	01/98	0.00	500.55	1001.10 DB
04/02/98	D.C.R.	300	01-00	5000	04/98	500.55	0.00	1501.65 DB
04/15/98	J.V.	29381	01-01	5000	02/98	0.00	500.55	1001.10 DB

05/07/98	D.C.R.	325	01-00	5000	05/98	500.55	0.00	1501.65 DB
05/15/98	J.V.	32721	01-01	5000	03/98	0.00	500.55	1001.10 DB
06/02/98	D.C.R.	341	01-00	5000	06/98	500.55	0.00	1501.65 DB
06/15/98	J.V.	36561	01-01	5000	04/98	0.00	500.55	1001.10 DB
07/07/98	D.C.R.	365	01-00	5000	07/98	500.55	0.00	1501.65 DB
07/15/98	J.V.	40761	01-01	5000	05/98	0.00	500.55	1001.10 DB
08/06/98	D.C.R.	387	01-00	5000	08/98	500.55	0.00	1501.65 DB
08/14/98	J.V.	47271	01-01	5000	06/98	0.00	500.55	1001.10 DB
09/02/98	D.C.R.	402	01-00	5000	09/98	500.55	0.00	1501.65 DB
09/15/98	J.V.	51701	01-01	5000	07/98	0.00	260.31	1241.34 DB
10/02/98	D.C.R.	422	01-00	5000	10/98	500.55	0.00	1741.89 DB
11/05/98	D.C.R.	444	01-00	5000	11/98	500.55	0.00	2242.44 DB
12/01/98	J.V.	06247	01-01	5000	07/98	260.31	0.00	2502.75 DB
12/04/98	D.C.R.	463	01-00	5000	12/98	500.55	0.00	3003.30 DB
12/14/98	INVOICE	98348	07734	5000	07/98	0.00	500.55	2502.75 DB
12/14/98	INVOICE	98348	07734A	5000	08/98	0.00	500.55	2002.20 DB
12/14/98	INVOICE	98348	07734B	5000	09/98	0.00	500.55	1501.65 DB
12/14/98	INVOICE	98348	07734C	5000	10/98	0.00	500.55	1001.10 DB
12/14/98	INVOICE	98348	07734D	5000	11/98	0.00	500.55	500.55 DB
12/14/98	INVOICE	98348	07734E	5000	12/98	0.00	500.55	0.00 DB

A-19 State of Washington Revenue Refund	Agency No.	Location Code
	3000	

AGENCY NAME
Department of Social & Health Services OAS/Trust Fund Unit PO Box 9501 Olympia, WA 98507-9501
CLAIMANT
SOC. SEC. ADMIN., ~~xxx xx xxxx~~ 402 YAUGER WAY SW OLYMPIA, WA 98502-5068

Date	Description	Amount	Agency Use
	TO RETURN FUNDS FORM THE TRUST FUND ACCOUNT OF NACOLE A. BLIMKA, 010181. 7-98 500.55 8-98 500.55 9-98 500.55 10-98 500.55 11-98 500.55 12-98 500.55	$3,003.30	5000

Prepared By	Tele. #	Date	Agency Approval	Date
//s// Sheryl Choate			//s// Karen Kegley-Justinen	12-10-98

Dos. Date	Print Run Date	Current Doc. No.	Reference Doc. No.	Vendor Number	Vendor Message	UBI Number
12/10/98		TRU		VOD1	BLIMKA	

Trans Code	Program Index	Source	Amount	Invoice
198	A0000	410000	$3,003.30	TRUSTEE

Account Approval For Payment	Date	Warrant Total	Warrant Number
		$3,003.30	

Social Security Administration
Supplemental Security Code

(Income)

Notice of Overpayment

402 Yauger Way S.W.
Olympia, WA 98502
Phone: (360) 753-9451
TDD: (360) 534-9333
FAX: (360) 753-8077
Office Hours: 9:00 a.m. to 4.30 p.m.

SECY DSHS for
Nacole A. Blimka
PO BX 9501
Olympia, WA 98507-9501

November 18, 1998
Claim Number: ~~xxx xx xxxx~~

Dear DSHS:

We are writing to let you know that we have paid Nacole $2502.75* (Please see note below) too much Supplemental Security Income (SSI) money. The overpayment happened July 1998 through November 1998.

Nacole returned to her parents on June 12, 1998. Effective July 1998 you were not due checks for Nacole since she was not in your custody. You will be paid an additional $500.55 on December 1, 1998 as it is too late to stop that check. This will bring the overpayment to $3003.30.

Later in this letter, we'll give you a detailed explanation of Nacole's overpayment.

You must pay us back unless we decide you shouldn't have to pay us back or we're wrong about the overpayment. If you think you shouldn't have to pay us back or you disagree with the decision about the overpayment, you can:

- Ask for a waiver,
- Ask for an appeal, or
- Do both.

This letter will tell you more about these things you can do.

If You Think You Shouldn't Have To Pay Us Back

You may not have to pay us back. Sometimes we can waive the collection of an overpayment, which means you won't have to pay us back. We can do this if both the following are true.

- It wasn't Nacole's fault that you got too much SSI money.

AND

- Paying us back would mean you can't pay her bills for food, clothing, housing, medical care, or other necessary expenses, or it would be unfair for some other reason.

If you think these are true about Nacole, contact any Social Security office. You can ask for waiver at any

time by completing the waiver form and returning it to us. The form is called Request for Waiver of Recovery or Change in Repayment Rate, Form SSA-632. We will be happy to help you fill out the form. We won't collect the overpayment while we decide if we can waive it.

If You Disagree With The Decision

If you disagree with the decision, you have the right to appeal. We will review the case and look at any new facts you have.

- You have 60 days to ask for an appeal.
- The 60 days start the day after you get this letter. We assume you got this letter 5 days after the date on it unless you show us that you did not get it within the 5-day period.
- You will have to have a good reason for waiting more than 60 days to ask for an appeal.
- To appeal, you must fill out a form called "Request for Reconsideration." The form number is SSA-561. To get this form, contact one of our offices. We can help you fill out the form.

How To Appeal

There are three ways to appeal. **You can pick the one you want. If you meet with us in person, it may help us decide Nacole's case.**

- **Case Review.** You have a right to review the facts in Nacole's file. You can give us more facts to add to her file. The we will decide her case

again. You will not meet with the person who decides her case.

- **Informal Conference.** You will meet with the person who decides Nacole's case. You can tell that person why you think you are right. You can give us more facts to help prove you are right. You can bring other people to help explain Nacole's case.
- **Formal Conference**. This is a meeting like an informal conference. The difference is we can make people come to help prove you are right. We can make them bring important papers about Nacole's case, even if they do not want to help you. You can question these people at your meeting.

If You Want Help With Your Appeal

You can have a friend, lawyer or someone else help you. There are groups that can help you find a lawyer or give you free legal services if you qualify. There are also lawyers who do not charge unless you win your appeal. We have a list of groups that can help you with your appeal.

If you get someone to help you, you should let us know. If you hire someone, we must approve the fee before he or she can collect it.

How To Pay Us Back

There are two ways you can pay us back.

- You can send us a check or money order for the full amount of Nacole's overpayment. Make the check or money order out to the Social Security Administration. Be sure to put Nacole's Social Security number on it. Please use the enclosed envelope to mail the check or money order to us. Also, be sure to enclose the payment stub with the check or money order.

OR

- If you can't send us the full amount now, send as much as you can. Then contact any Social Security office. You can pay the rest of the money you owe by making monthly payments.

If you can't pay us in full, please contact us in the next 30 days. You'll need to tell us how you plan to pay us back.

If You Have Any Questions

If you have any questions, you should call, write or visit any Social Security office. If you call or visit our office, please have this letter with you and ask for Marilyn N. Harder. The telephone number is shown at the top of page 1. We can answer most questions over the phone.

Also, if you plan to visit an office, you may call ahead to make an appointment. This will help us serve you more quickly.

_//s//_____ for B. Maurmann
Field Office Manager

Enclosure(s):
Detailed Explanation of Overpayment
Payment Stub
Refund Envelope

22x

A Detailed Explanation of The Overpayment

Overpayment Summary

Nacole was overpaid $2502.75* (Please see note below). The following table shows how her payment changed each month. The first column lists the month(s) we paid Nacole incorrectly. The next column shows the incorrect amount for each month. The last column, **Correct Amount for Each Month** shows the amount we should have paid Nacole for each month.

Month	Incorrect Amount for Each Month	Correct Amount for Each Month
July-November	$500.00	$000.00

*NOTE: You will also be overpaid in December 1998 as it is too late to stop that check. This check will be for $500.55 bringing the overpayment to $3003.30.

Why Nacole Was Overpaid

For the month(s) listed below, the income on our records was wrong. Because we didn't know about all the income, we paid Nacole too much SSI.

Nacole was not in your custody so you were not due money for Nacole after June 12, 1998.

To help us credit Nacole's record, please fill out this form and return it with your payment in the enclosed envelope.

NAME: Nacole Blimka
ACCOUNT NUMBER: ~~xxx-xx-xxxx~~
AMOUNT DUE: $2502.75* (Please see note below)
ENTER AMOUNT ENCLOSED: $_____

50 RANDOM ACCOUNTS
COTTON, JASMINE

SOCIAL SECURITY ACCOUNTING

Last Name	COTTEN
First Name	JASMINE
MI	V
SSN	~~xxxxxxxxx~~
DOB	3/22/96
Funding Source	SSI

Payments Received	$23,362.37
Interest Earned	$0.00
Payments Returned	$0.00
Account Disbursements	$0.00
Foster Care Reimbursement	$23,362.37
Balance	$0.00

Wednesday, January 05, 2000

REPORT DATE: 10/09/96
PURGE DATE: 07/01/96
PAGE: 1

---- DEPARTMENT OF SOCIAL AND HEALTH SERVICES ----
---- OFFICE OF ACCOUNTING SERVICES ----
---- TRUST FUND SECTION -----
PURGE REPORT FOR THE CLIENT TRUST FUND TRANSACTIONS

CLIENT: COTTEN, JASMINE V.
PIC: COTTEJV032296A

DATE	DOCUMENT	NUMBER	TRANS	REV	DESCRIPTION	DEBIT	CREDIT	BALANCE
05/03/96	D.C.R.	53514	01-01	5000	NEW ACCOUNT	495.42	0.00	495.42 DB
05/08/96	D.C.R.	53562	01-01	5000		11676.29	0.00	12171.71 DB
06/02/96	J.V.	03793	01-01	5000	04-94 FC	0.00	79.01	12092.70 DB
06/02/96	J.V.	03793	01-02	5000	05-94 FC	0.00	474.00	11618.70 DB
06/02/96	J.V.	03793	01-03	5000	06-94 FC	0.00	474.00	11144.70 DB
06/02/96	J.V.	03793	01-04	5000	07-94 FC	0.00	474.00	10670.70 DB
06/02/96	J.V.	03793	01-05	5000	08-94 FC	0.00	474.00	10196.70 DB
06/02/96	J.V.	03793	01-06	5000	09-94 FC	0.00	474.00	9722.70 DB
06/02/96	J.V.	03793	01-07	5000	10-94 FC	0.00	474.00	9248.70 DB
06/02/96	J.V.	03793	01-08	5000	11-94 FC	0.00	474.00	8774.70 DB

06/02/96	J.V.	03793	01-09	5000	12-94 FC	0.00	474.00	8300.70 DB
06/02/96	J.V.	03793	01-10	5000	01-95 FC	0.00	486.00	7814.70 DB
06/02/96	J.V.	03793	01-11	5000	02-95 FC	0.00	486.00	7328.70 DB
06/02/96	J.V.	03793	01-12	5000	03-95 FC	0.00	486.00	6842.70 DB
06/02/96	J.V.	03793	01-13	5000	04-95 FC	0.00	486.00	6356.70 DB
06/02/96	J.V.	03793	01-14	5000	05-95 FC	0.00	486.00	5870.70 DB
06/02/96	J.V	03793	01-15	5000	06-95 FC	0.00	486.00	5384.70 DB
06/02/96	J.V.	03793	01-16	5000	07-95 FC	0.00	486.00	4898.70 DB
06/02/96	J.V.	03793	01-17	5000	08-95 FC	0.00	486.00	4412.70 DB
06/02/96	J.V.	03793	01-18	5000	09-95 FC	0.00	486.00	3926.70 DB
06/02/96	J.V.	03793	01-19	5000	10-95 FC	0.00	486.00	3440.70 DB
06/02/96	J.V.	03793	01-20	5000	11-95 FC	0.00	481.80	2958.90 DB
06/02/96	J.V.	03793	01-21	5000	12-95 FC	0.00	481.80	2477.10 DB
06/02/96	J.V.	03793	01-22	5000	01-96 FC	0.00	495.42	1981.68 DB
06/02/96	J.V.	03793	01-23	5000	02-96 FC	0.00	495.42	1486.26 DB
06/02/96	J.V.	03793	01-24	5000	03-96 FC	0.00	495.42	990.84 DB
06/02/96	J.V.	03793	01-25	5000	04-95 96 FC	0.00	495.42	495.42 DB
06/02/96	J.V.	53785	01-01	5000		495.42	0.00	990.84 DB

REPORT DATE: 04/08/98
PURGE DATE: 01/01/98
PAGE: 1

----- DEPARTMENT OF SOCIAL AND HEALTH SERVICES -----
----- OFFICE OF ACCOUNTING SERVICES -----
----- TRUST FUND SECTION -----
PURGE REPORT FOR THE CLIENT TRUST FUND TRANSACTIONS

CLIENT: COTTEN, JASMINE V.
PIC: COTTEJV032296A

DATE	DOCUMENT	NUMBER	TRANS	REV	DESCRIPTION	DEBIT	CREDIT	BALANCE
07/01/96	D.C.R.	00000	01-01	5000	BAL FWD	990.84	0.00	990.84 DB
07/03/96	D.C.R.	54054	01-01	5000		495.42	0.00	1486.26 DB
07/11/96	J.V.	03950	03-00	5000	05-96 FC	0.00	495.42	990.84 DB
08/05/96	D.C.R.	54346	04-00	5000		495.42	0.00	1486.26 DB
08/13/96	J.V.	04430	02-00	5000	06-96 FC	0.00	495.42	990.84 DB
09/05/96	D.C.R.	54618	04-00	5000		495.42	0.00	1486.26 DB
09/13/96	J.V.	04931	05-00	5000	07-96 FC	0.00	495.42	990.84 DB
10/04/96	D.C.R.	54889	04-00	5000		495.42	0.00	1486.26 DB
10/14/96	J.V.	05414	01-00	5000	08-96 FC	0.00	445.41	1040.85 DB

11/01/96	D.C.R.	1	01-01	5000	11/96	495.42	0.00	1536.27 DB
11/15/96	J.V.	05771	01-00	5000	9/96 FC	0.00	545.43	990.84 DB
12/05/96	D.C.R.	19	01-00	5000	12/96	495.42	0.00	1486.26 DB
12/12/96	D.C.R.	23	04-00	5000	12/96	21.82	0.00	1508.08 DB
12/13/96	J.V.	06112	01-00	5000	10-96 FC	0.00	495.42	1012.66 DB
01/03/97	D.C.R.	34	01-01	5000	01/97	512.00	0.00	1524.66 DB
01/15/97	J.V.	06448	01-00	5000	11/96 FC	0.00	495.42	1029.24 DB
02/04/97	D.C.R.	54	03-00	5000	02/97	512.00	0.00	1541.24 DB
02/10/97	J.V.	06818	01-01	5000	12-96 FC	0.00	517.24	1024.00 DB
03/06/97	D.C.R.	56239	01-00	5000	3/97	512.00	0.00	1536.00 DB
03/17/97	J.V.	07112	01-01	5000	1/97 FC	0.00	512.00	1024.00 DB
04/03/97	D.C.R.	90	01-00	5000	04/97	512.00	0.00	1536.00 DB
04/14/97	J.V.	07455	01-01	5000	2/97 FC	0.00	512.00	1024.00 DB
05/07/97	D.C.R.	109	01-00	5000	05/97	512.00	0.00	1536.00 DB
05/12/97	J.V.	07710	01-01	5000	3/97 FC	0.00	512.00	1024.00 DB
06/03/97	D.C.R.	126	01-00	5000	06/97	512.00	0.00	1536.00 DB
06/16/97	J.V.	08254	01-01	5000	04/97	0.00	512.00	1024.00 DB
07/03/97	D.C.R.	144	01-00	5000	07/97	512.00	0.00	1536.00 DB

REPORT DATE: 04/08/98
PURGE DATE: 01/01/98
PAGE: 2

----- DEPARTMENT OF SOCIAL AND HEALTH SERVICES -----
----- OFFICE OF ACCOUNTING SERVICES -----
----- TRUST FUND SECTION -----
PURGE REPORT FOR THE CLIENT TRUST FUND TRANSACTIONS

CLIENT: COTTEN, JASMINE V.
PIC: COTTEJV032296A

DATE	DOCUMENT	NUMBER	TRANS	REV	DESCRIPTION	DEBIT	CREDIT	BALANCE
07/15/97	J.V.	00048	01-01	5000	05/97	0.00	512.00	1024.00 DB
08/05/97	D.C.R.	165	01-00	5000	08/97	512.00	0.00	1536.00 DB
08/15/97	J.V.	20313	01-01	5000	06/97	0.00	512.00	1024.00 DB
09/03/97	D.C.R.	181	01-00	5000	09/97	512.00	0.00	1536.00 DB
09/15/97	J.V.	06142	01-01	5000	07/97	0.00	512.00	1024.00 DB
10/03/97	D.C.R	198	01-00	5000	10/97	512.00	0.00	1536.00 DB
10/15/97	J.V.	09352	01-01	5000	08/97	0.00	512.00	1024.00 DB
11/04/97	D.C.R.	213	01-00	5000	11/97	512.00	0.00	1529.90 DB
11/14/97	J.V.	11422	01-01	5000	09/97	0.00	512.00	1017.90 DB
12/04/97	D.C.R.	230	01-00	5000	12/97	505.90	0.00	1529.90 DB
12/15/97	J.V.	16182	01-01	5000	10/97	0.00	512.00	1017.90 DB

REPORT DATE: 10/15/98
PAGE: 1

----- DEPARTMENT OF SOCIAL AND HEALTH SERVICES -----
----- OFFICE OF ACCOUNTING SERVICES -----
----- TRUST FUND SECTION -----
PURGE REPORT FOR THE CLIENT TRUST FUND TRANSACTIONS

CLIENT: COTTEN, JASMINE V.
PIC: COTTEJV032296A

DATE	DOCUMENT	NUMBER	TRANS	REV	DESCRIPTION	DEBIT	CREDIT	BALANCE
01/01/98	D.C.R.	00000		5000	BAL FWD	1017.90	0.00	1017.90 DB
01/06/98	D.C.R.	249	01-00	5000	01/98	521.00	0.00	1538.90 DB
01/15/98	J.V.	18982	01-01	5000	11/97	0.00	512.00	1026.90 DB
02/03/98	D.C.R.	263	01-00	5000	02/98	521.00	0.00	1547.90 DB
02/13/98	J.V.	22302	01-01	5000	12/97	0.00	505.90	1042.00 DB
03/03/98	D.C.R.	278	01-00	5000	03/98	521.00	0.00	1563.00 DB
03/13/98	J.V.	25372	01-01	5000	01/98	0.00	521.00	1042.00 DB
04/15/98	J.V.	29382	01-01	5000	02/98	0.00	521.00	521.00 DB
05/15/98	J.V.	32722	01-01	5000	03/98	0.00	521.00	0.00 DB

50 RANDOM ACCOUNTS
FILBECK, JENNIFER

SOCIAL SECURITY ACCOUNTING

Last Name	FILBECK
First Name	JENNIFER
MI	L
SSN	[redacted]
DOB	1/16/77
Funding Source	SSI/SSA
Payments Received	$49,597.92
Interest Earned	$75.17
Payments Returned	$3,241.26
Account Disbursements	$123.20
Foster Care Reimbursement	$46,308.63
Balance	$0.00

Wednesday, January 05, 2000

REPORT DATE: 09/19/89
PURGE DATE: 06/01/89
PAGE: 1

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION
PURGE REPORT FOR THE CLIENT TRUST FUND TRANSACTIONS

CLIENT: FILBECK, JENNIFER L
PIC: FILBEJL011677A

DATE	DOCUMENT	NUMBER	TRANS	REV	DESCRIPTION	DEBIT	CREDIT	BALANCE
12/05/88	D.C.R.	25238	18-03	2000	NEW ACCOUNT	162.20	0.00	162.20 DB
01/03/89	D.C.R.	25567	08-08	5000		290.55	0.00	452.75 DB
01/04/89	D.C.R.	25572	15-03	2000		352.00	0.00	804.75 DB
01/04/89	D.C.R.	25581	07-03	2000		105.00	0.00	909.75 DB
02/02/89	D.C.R.	25955	08-06	5000		290.55	0.00	1200.30 DB
02/06/89	D.C.R.	25977	07-10	2000		157.00	0.00	1357.30 DB
03/03/89	D.C.R.	26335	08-05	5000		238.55	0.00	1595.85 DB
03/06/89	D.C.R	26352	04-12	2000		157.00	0.00	1752.85 DB
03/22/89	J.V.	15332	03-02	2000	JANUARY 89 EC	0.00	157.00	1595.85 DB

03/22/89	INVOICE	C5498	C5498	5000		0.00	342.55	1253.30 DB
04/03/89	D.C.R.	26728	08-03	5000		238.55	0.00	1491.85 DB
04/04/89	D.C.R.	26742	10-09	2000		157.00	0.00	1648.85 DB
04/26/89	J.V.	16267	03-08	5000	FEB. 89 FC	0.00	238.55	1410.30 DB
04/26/89	J.V.	16267	03-09	2000	FEB. 89 FC	0.00	51.92	1358.38 DB
05/03/89	D.C.R.	27171	09-12	5000		238.55	0.00	1596.93 DB
05/04/89	D.C.R.	27183	06-11	2000		157.00	0.00	1753.93 DB
05/17/89	J.V.	16853	03-12	5000	MARCH 89 FC	0.00	238.55	1515.38 DB
05/17/89	J.V.	16853	03-13	2000	MARCH 89 FC	0.00	51.92	1463.46 DB

REPORT DATE: 04/16/90
PURGE DATE: 02/01/90
PAGE: 1

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION
PURGE REPORT FOR THE CLIENT TRUST FUND TRANSACTIONS

CLIENT: FILBECK, JENNIFER L.
PIC: FILBEJL011677A

238

DATE	DOCUMENT	NUMBER	TRANS	REV	DESCRIPTION	DEBIT	CREDIT	BALANCE
06/01/89	D.C.R	00000			BAL FWD	1463.46	0.00	1463.46 DB
06/02/89	D.C.R.	27570	08-02	5000		238.55	0.00	1702.01 DB
06/06/89	D.C.R.	27603	04-08	2000		157.00	0.00	1859.01 DB
06/26/89	J.V.	17702	03-11	5000	APRIL 89 FC	0.00	238.55	1620.46 DB
06/26/89	J.V.	17702	03-12	2000	APRIL 89 FC	0.00	51.92	1568.54 DB
07/03/89	D.C.R.	27976	08-07	5000		238.55	0.00	1807.09 DB
07/05/89	D.C.R.	27993	11-03	2000		157.00	0.00	1964.09 DB
07/24/89	J.V.	00123	02-01	2000	AUG. 88 FC	0.00	100.00	1864.09 DB
7/24/89	J.V.	00123	02-02	5000	OCT. 88 FC	0.00	105.08	1759.01 DB

239

07/24/89	J.V.	00123	02-03	5000	NOV. 88 FC	0.00	233.65	1525.36 DB
07/24/89	J.V.	00123	02-04	5000	DEC. 88 FC	0.00	185.47	1339.89 DB
07/24/89	J.V.	00123	02-05	2000	DEC. 88 FC	0.00	105.00	1234.89 DB
07/26/89	J.V.	00167	03-12	5000	MAY 89 FC	0.00	238.55	996.34 DB
07/26/89	J.V.	00167	03-13	2000	MAY 89 FC	0.00	51.92	944.42 DB
08/02/89	D.C.R.	28704	08-04	5000		238.55	0.00	1182.97 DB
8/04/89	D.C.R.	28733	08-02	2000		157.00	0.00	1339.97 DB
08/30/89	INVOICE	C0826	C0827	7000	TO SAVINGS	0.00	300.00	1039.97 DB
08/31/89	J.V.	00613	03-08	5000	JUNE 89 FC	0.00	238.55	801.42 DB
08/31/89	J.V.	00613	03-09	2000	JUNE 89 FC	0.00	51.92	749.50 DB
09/05/89	D.C.R.	29141	02-40	5000		238.55	0.00	988.05 DB
09/05/89	D.C.R.	29142	02-20	2000		157.00	0.00	1145.05 DB
09/25/89	J.V.	00842	05-22	2000	JULY 89 FC	0.00	157.00	988.05 DB
09/25/89	J.V.	00842	05-23	5000	JULY 89 FC	0.00	238.55	749.50 DB
10/02/89	D.C.R.	29522	02-39	5000		238.55	0.00	988.05 DB
10/04/89	D.C.R.	29560	02-37	2000		157.00	0.00	1145.05 DB
10/13/89	J.V.	01502	01-22	2000	AUGUST 89 FC	0.00	157.00	988.05 DB
10/13/89	J.V.	01502	01-23	5000	AUGUST 89 FC	0.00	238.55	749.50 DB
11/02/89	D.C.R.	29983	02-42	5000		238.55	0.00	988.05 DB
11/06/89	D.C.R.	30019	02-07	2000		157.00	0.00	1145.05 DB

11/14/89	J.V.	02192	01-18	2000	SEPT 89 FC	0.00	157.00	988.05 DB
11/14/89	J.V.	02192	01-19	5000	SEPT 89 FC	0.00	238.55	749.50 DB
11/27/89	INVOICE	C2270	C2273	7000	TO SAVINGS	0.00	115.40	634.10 DB
12/04/89	D.C.R.	30376	02-26	2000		157.00	0.00	791.10 DB
12/04/89	D.C.R.	30377	03-03	5000		238.55	0.00	1029.65 DB
12/29/89	J.V.	03581	01-28	5000	OCT FC	0.00	238.55	791.10 DB
12/29/89	J.V.	03581	01-29	2000	OCT FC	0.00	157.00	634.10 DB
01/02/90	D.C.R.	30719	03-04	5000		248.55	0.00	882.65 DB
01/04/90	D.C.R.	30759	02-25	2000		165.00	0.00	1047.65 DB
01/25/90	J.V.	03909	02-26	5000	NOV 89 FC	0.00	238.55	809.10 DB
01/25/90	J.V.	03909	02-27	2000	NOV 89 FC	0.00	157.00	652.10 DB

REPORT DATE: 02/07/91
PURGE DATE: 11/01/90
PAGE: 1

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION
PURGE REPORT FOR THE CLIENT TRUST FUND TRANSACTIONS

CLIENT: FILBECK, JENNIFER L
PIC: FILBEJL011677A

DATE	DOCUMENT	NUMBER	TRANS	REV	DESCRIPTION	DEBIT	CREDIT	BALANCE	
02/01/90	D.C.R	00000			BAL FWD	652.10	0.00	652.10	DB
02/02/90	D.C.R.	31159	03-04	5000		248.55	0.00	900.65	DB
02/02/90	D.C.R.	31164	02-21	2000		165.00	0.00	1065.65	DB
02/21/90	J.V.	04505	01-29	5000	DEC 89 FC	0.00	238.55	822.10	DB
02/21/90	J.V.	04505	01-30	2000	DEC 89 FC	0.00	165.00	662.10	DB
03/02/90	D.C.R.	31533	03-06	5000		248.55	0.00	910.65	DB
03/05/90	D.C.R.	31556	02-21	2000		165.00	0.00	1075.65	DB
03/15/90	J.V.	05197	02-30	5000	JAN 90 FC	0.00	248.55	827.10	DB
03/15/90	J.V.	05197	02-31	2000	JAN 90 FC	0.00	165.00	662.10	DB

04/02/90	D.C.R.	32464	03-01	5000		248.55	0.00	910.65	DB
04/04/90	D.C.R.	32507	02-20	2000		165.00	0.00	1075.65	DB
04/19/90	J.V.	06088	01-21	5000	FEB 90 FC	0.00	248.55	827.10	DB
04/19/90	J.V.	06088	01-22	2000	FEB 90 FC	0.00	165.00	662.10	DB
05/03/90	D.C.R.	32919	02-22	2000		165.00	0.00	827.10	DB
05/04/90	D.C.R.	32945	01-01	5000		2428.55	0.00	1075.65	DB
05/18/90	J.V.	06858	01-29	5000	MARCH 90 FC	0.00	248.55	827.10	DB
05/18/90	J.V.	06858	01-30	2000	MARCH 90 FC	0.00	165.00	662.10	DB
06/04/90	D.C.R.	33344	02-31	2000		165.00	0.00	827.10	DB
06/04/90	D.C.R.	33345	03-04	5000		248.55	0.00	1075.65	DB
06/15/90	J.V.	07753	02-02	5000	APRIL 90 FC	0.00	248.55	827.10	DB
06/15/90	J.V.	07753	02-03	2000	APRIL 90 FC	0.00	165.00	662.10	DB
07/02/90	D.C.R.	33754	03-04	5000		248.55	0.00	910.65	DB
07/05/90	D.C.R.	33788	02-29	2000		165.00	0.00	1075.65	DB
07/13/90	J.V.	08674	02-02	5000	MAY 90 FC	0.00	248.55	827.10	DB
07/13/90	J.V.	08674	02-03	2000	MAY 90 FC	0.00	165.00	662.10	DB
08/03/90	D.C.R.	34190	02-01	5000		248.55	0.00	910.65	DB
08/06/90	D.C.R.	34209	02-30	2000		165.00	0.00	1075.65	DB
08/16/90	J.V.	09948	02-06	5000	JUNE 90 FC	0.00	248.55	827.10	DB
08/16/90	J.V.	09948	02-07	2000	JUNE 90 FC	0.00	165.00	662.10	DB

09/04/90	D.C.R.	34618	02-26	2000		165.00	0.00	827.10	DB
09/05/90	D.C.R.	34644	02-20	5000		248.55	0.00	1075.65	DB
09/26/90	J.V.	11354	01-11	5000	JULY 90 FC	0.00	248.55	827.10	DB
09/26/90	J.V.	11354	01-12	2000	JULY 90 FC	0.00	165.00	662.10	DB
10/02/90	D.C.R.	35044	02-37	5000		248.55	0.00	910.65	DB
10/04/90	D.C.R.	35092	02-27	2000		165.00	0.00	1075.65	DB
10/26/90	J.V.	12246	02-07	5000	AUGUST 90 FC	0.00	248.55	827.10	DB
10/26/90	J.V.	12246	02-08	2000	AUGUST 90 FC	0.00	165.00	662.10	DB

REPORT DATE: 10/28/91
PURGE DATE: 08/01/91
PAGE: 1

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION
PURGE REPORT FOR THE CLIENT TRUST FUND TRANSACTIONS

CLIENT: FILBECK, JENNIFER L
PIC: FILBEJL011677A

DATE	DOCUMENT	NUMBER	TRANS	REV	DESCRIPTION	DEBIT	CREDIT	BALANCE	
11/01/90	D.C.R.	00000			BAL FWD	662.10	0.00	662.10	DB
11/02/90	D.C.R.	35568	02-41	5000		248.55	0.00	910.65	DB
11/05/90	D.C.R.	35587	02-26	2000		165.00	0.00	1075.65	DB
11/27/90	J.V.	13150	01-07	5000	SEPT 90 FC	0.00	248.55	827.10	DB
11/27/90	J.V.	13150	01-08	2000	SEPT 90 FC	0.00	165.00	662.10	DB
12/03/90	D.C.R.	36030	02-39	5000		248.55	0.00	910.65	DB
12/04/90	D.C.R.	36034	02-31	2000		165.00	0.00	1075.65	DB
12/24/90	J.V.	14028	03-07	5000	OCT 90 FC	0.00	248.55	827.10	DB
12/24/90	J.V.	14028	03-08	2000	OCT 90 FC	0.00	165.00	662.10	DB

244

01/02/91	D.C.R.	36478	02-42	5000		260.55	0.00	922.65	DB
01/04/91	D.C.R.	36522	02-36	2000		174.00	0.00	1096.65	DB
01/30/91	J.V.	14988	01-07	5000	NOV 90 FC	0.00	248.55	848.10	DB
01/30/91	J.V.	14988	01-08	2000	NOV 90 FC	0.00	165.00	683.10	DB
02/04/91	D.C.R.	37023	02-30	2000		174.00	0.00	857.10	DB
02/05/91	D.C.R.	37024	02-43	5000		260.55	0.00	1117.65	DB
02/27/91	J.V.	15820	01-07	5000	DEC 90 FC	0.00	248.55	869.10	DB
02/27/91	J.V.	15820	01-08	2000	DEC 90 FC	0.00	174.00	695.10	DB
03/04/91	D.C.R.	37268	02-33	2000		174.00	0.00	869.10	DB
03/04/91	D.C.R.	37269	02-34	5000		260.55	0.00	1129.65	DB
03/28/91	J.V.	16714	01-07	5000	JAN 91 FC	0.00	260.55	869.10	DB
03/28/91	J.V.	16714	01-08	2000	JAN 91 FC	0.00	174.00	695.10	DB
04/02/91	D.C.R.	37535	02-42	5000		260.55	0.00	955.65	DB
04/04/91	D.C.R.	37563	02-31	2000		174.00	0.00	1129.65	DB
04/26/91	J.V.	17574	03-07	5000	FEB 91 FC	0.00	260.55	869.10	DB
04/26/91	J.V.	17574	03-08	2000	FEB 91 FC	0.00	174.00	695.10	DB
05/02/91	D.C.R.	37816	02-37	5000		260.55	0.00	955.65	DB
05/06/91	D.C.R.	37834	02-34	2000		174.00	0.00	1129.65	DB
05/28/91	J.V.	18346	03-07	5000	MARCH 91 FC	0.00	260.55	869.10	DB
05/28/91	J.V.	18346	03-08	2000	MARCH 91 FC	0.00	174.00	695.10	DB

245

06/03/91	D.C.R.	38072	03-04	5000		260.55	0.00	955.65	DB
06/04/91	D.C.R.	38078	02-37	2000		174.00	0.00	1129.65	DB
06/26/91	J.V.	19416	03-07	5000	APRIL 91 FC	0.00	260.55	869.10	DB
06/26/91	J.V.	19416	03-08	2000	APRIL 91 FC	0.00	174.00	695.10	DB
07/03/91	D.C.R.	38359	03-02	5000		260.55	0.00	955.65	DB
07/05/91	D.C.R.	38371	02-23	2000		174.00	0.00	1129.65	DB
07/19/91	J.V.	20037	01-07	5000	MAY 91 FC	0.00	260.55	869.10	DB
07/19/91	J.V.	20037	01-08	2000	MAY 91 FC	0.00	174.00	695.10	DB

REPORT DATE: 08/11/92
PURGE DATE: 06/01/92
PAGE: 1

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION
PURGE REPORT FOR THE CLIENT TRUST FUND TRANSACTIONS

CLIENT: FILBECK, JENNIFER L
PIC: FILBEJL011677A

DATE	DOCUMENT	NUMBER	TRANS	REV	DESCRIPTION	DEBIT	CREDIT	BALANCE	
08/01/91	D.C.R.	00000			BAL FWD	695.10	0.00	695.10	DB
08/02/91	D.C.R.	38585	03-05	5000		260.55	0.00	955.65	DB
08/05/91	D.C.R.	38592	02-37	2000		174.00	0.00	1129.65	DB
08/30/9	J.V.	378	03-07	5000	JUNE 91 FC	0.00	260.55	869.10	DB
08/30/91	J.V.	378	03-08	2000	JUNE 91 FC	0.00	174.00	695.10	DB
09/03/91	D.C.R.	38829	03-06	5000		260.55	0.00	955.65	DB
09/04/91	D.C.R.	38839	02-41	2000		174.00	0.00	1129.65	DB
09/27/91	J.V.	631	04-07	5000	JULY 91 FC	0.00	260.55	869.10	DB
09/27/91	J.V.	631	04-08	2000	JULY 91 FC	0.00	174.00	695.10	DB

10/03/91	D.C.R.	39099	03-05	5000		260.55	0.00	955.65 DB
10/04/91	D.C.R.	39108	02-41	2000		174.00	0.00	1129.65 DB
10/24/91	J.V.	1241	01-12	5000	AUG 91 FC	0.00	260.55	869.10 DB
10/24/91	J.V.	1241	01-13	2000	AUG 91 FC	0.00	174.00	695.10 DB
11/04/91	D.C.R.	39356	02-00	2000		174.00	0.00	869.10 DB
11/04/91	D.C.R.	39357	03-23	5000		260.55	0.00	1129.65 DB
11/22/91	J.V.	01864	01-07	2000	9-91 FC	0.00	174.00	955.65 DB
11/22/91	J.V.	01864	01-08	5000	9-91 FC	0.00	260.55	695.10 DB
12/03/91	D.C.R.	39587	03-00	5000		260.55	0.00	955.65 DB
12/04/91	D.C.R.	39610	02-00	2000		174.00	0.00	1129.65 DB
12/26/91	J.V.	02484	01-07	2000	10-91 FC	0.00	174.00	955.65 DB
12/26/91	J.V.	02484	01-08	5000	10-91 FC	0.00	260.55	695.10 DB
01/02/92	D.C.R.	39817	03-00	5000		269.55	0.00	964.65 DB
01/06/92	D.C.R.	39830	02-00	2000		180.00	0.00	1144.65 DB
01/24/92	J.V.	02986	01-01	2000	11-91 FC	0.00	174.00	970.65 DB
01/24/92	J.V.	02986	01-02	5000	11-91 FC	0.00	260.55	710.10 DB
02/03/92	D.C.R.	40048	03-00	5000		269.55	0.00	979.65 DB
02/04/92	D.C.R.	40055	01-00	5000		180.00	0.00	1159.65 DB
02/21/92	J.V.	03570	01-07	2000	12-91 FC	0.00	180.00	979.65 DB
02/21/92	J.V.	03570	01-08	5000	12-91 FC	0.00	260.55	719.10 DB

03/02/92	D.C.R.	40279	03-00	5000		269.55	0.00	988.65 DB
03/03/92	D.C.R.	40290	01-00	2000		180.00	0.00	1168.65 DB
03/23/92	J.V.	04158	01-00	2000	1-92 FC	0.00	180.00	988.65 DB
03/23/92	J.V.	04158	01-01	5000	1-92 FC	0.00	269.55	719.10 DB
04/02/92	D.C.R.	40567	04-00	5000		269.55	0.00	988.65 DB
04/06/92	D.C.R.	40586	03-00	2000		180.00	0.00	1168.65 DB
04/17/92	J.V.	04825	26-00	2000	2-92 FC	0.00	180.00	988.65 DB
04/17/92	J.V.	04825	26-01	5000	2-92 FC	0.00	269.55	719.10 DB
04/29/92	D.C.R.	40803	01-00	8000	FROM SAVINGS	200.00	0.00	919.10 DB
04/30/92	J.V.	05015	03-02	2000	1-92 FC BAL	0.00	69.58	849.52 DB
04/30/92	J.V.	05015	03-03	2000	2-92 FC BAL	0.00	69.58	779.94 DB
05/04/92	D.C.R.	40832	04-00	5000		269.55	0.00	1049.49 DB
05/04/92	D.C.R.	40833	03-00	2000		180.00	0.00	1229.49 DB

REPORT DATE: 08/11/92
PURGE DATE: 06/01/92
PAGE: 2

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION
PURGE REPORT FOR THE CLIENT TRUST FUND TRANSACTIONS

CLIENT: FILBECK, JENNIFER L
PIC: FILBELJL011677A

DATE	DOCUMENT	NUMBER	TRANS	REV	DESCRIPTION	DEBIT	CREDIT	BALANCE	
05/22/92	J.V.	05439	19-00	2000	3-92 FC	0.00	180.00	1049.49	DB
05/22/92	J.V.	05439	19-01	5000	3-92 FC	0.00	269.55	779.94	DB

250

REPORT DATE: 06/18/93
PURGE DATE: 01/01/93
PAGE: 1

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION
PURGE REPORT FOR THE CLIENT TRUST FUND TRANSACTIONS

CLIENT: FILBECK, JENNIFER L
PIC: FILBELJL011677A

DATE	DOCUMENT	NUMBER	TRANS	REV	DESCRIPTION	DEBIT	CREDIT	BALANCE	
06/01/92	D.C.R.	00000			BAL FWD	779.94	0.00	779.94	DB
06/02/92	D.C.R.	41063	04-00	5000		269.55	0.00	1049.49	DB
06/04/92	D.C.R.	41087	02-00	2000		180.00	0.00	1229.49	DB
06/25/92	J.V.	06071	20-02	2000	4-92 FC	0.00	180.00	1049.49	DB
06/25/92	J.V.	06071	20-03	5000	4-92 FC	0.00	269.55	779.94	DB
07/02/92	D.C.R.	41303	04-00	5000		269.55	0.00	1049.49	DB
07/06/92	D.C.R.	41311	01-00	2000		180.00	0.00	1229.49	DB
07/13/92	D.C.R.	41364	01-00	5000		3807.34	0.00	5036.83	DB
07/27/92	J.V.	06705	21-03	2000	5-92 FC	0.00	180.00	4856.83	DB
07/27/92	J.V.	06705	21-04	5000	5-92 FC	0.00	269.55	4587.28	DB
08/04/92	D.C.R.	41544	04-00	5000		269.55	0.00	4856.83	DB
08/04/92	D.C.R.	41545	03-00	2000		180.00	0.00	5036.83	DB
08/25/92	J.V.	07339	19-03	2000	6-92 FC	0.00	180.00	4866.83	DB

251

08/25/92	J.V.	07339	19-04	5000	6-92 FC	0.00	269.55	4587.28	DB
08/25/92	J.V.	07360	03-07	5000	3-92 FC BAL	0.00	69.58	4517.70	DB
08/25/92	J.V.	07360	03-08	5000	4-92 FC BAL	0.00	69.58	4448.12	DB
08/25/92	J.V.	07360	03-09	5000	5-92 FC BAL	0.00	69.58	4378.54	DB
08/25/92	J.V.	07360	03-10	5000	6-92 FC BAL	0.00	69.58	4308.96	DB
08/27/92	D.C.R.	41752	01-00	8000	FROM SAVINGS	290.57	0.00	4599.53	DB
09/02/92	D.C.R.	41796	01-00	5000		269.55	0.00	4869.08	DB
09/04/92	D.C.R.	41811	01-00	2000		180.00	0.00	5049.08	DB
09/25/92	J.V.	07887	19-03	2000	7-92 FC	0.00	180.00	4869.08	DB
09/25/92	J.V.	07887	19-04	5000	7-92 FC	0.00	269.55	4599.53	DB
09/30/92	J.V.	08105	02-00	5000	6/88-12/91 FC	0.00	3640.74	958.79	DB
10/02/92	D.C.R.	42031	01-00	5000		269.55	0.00	1228.34	DB
10/05/92	D.C.R.	42040	01-00	2000		180.00	0.00	1408.34	DB
10/22/92	J.V.	08406	19-05	2000	8-92 FC	0.00	180.00	1228.34	DB
10/22/92	J.V.	08406	19-06	5000	8-92 FC	0.00	269.55	958.79	DB
11/02/92	D.C.R.	42287	01-00	5000		269.55	0.00	1228.34	DB
11/04/92	D.C.R.	42311	01-00	2000		180.00	0.00	1408.34	DB
11/30/92	J.V.	09017	18-04	2000	9-92 FC	0.00	180.00	1228.34	DB
11/30/92	J.V.	09017	18-05	5000	9-92 FC	0.00	269.55	958.79	DB
12/02/92	D.C.R.	42520	01-00	5000		269.55	0.00	1228.34	DB
12/07/92	D.C.R.	42545	01-00	2000		180.00	0.00	1408.34	DB
12/22/92	J.V.	09406	01-03	2000	10-92 FC	0.00	180.00	1228.34	DB
12/22/92	J.V.	09406	01-04	5000	10-92 FC	0.00	269.55	958.79	DB

REPORT DATE: 02/14/94
PURGE DATE: 11/01/93
PAGE: 1

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION
PURGE REPORT FOR THE CLIENT TRUST FUND TRANSACTIONS

CLIENT: FILBECK, JENNIFER L
PIC: FILBELJL011677A

DATE	DOCUMENT	NUMBER	TRANS	REV	DESCRIPTION	DEBIT	CREDIT	BALANCE	
01/01/93	D.C.R.	00000			BAL FWD	958.79	0.00	958.79	DB
01/04/93	D.C.R.	42745	01-00	5000		276.55	0.00	1236.34	DB
01/04/93	D.C.R.	42746	01-00	2000		185.00	0.00	1420.34	DB
01/27/93	J.V.	09770	01-02	2000	11-92 FC	0.00	180.00	1240.34	DB
01/27/93	J.V.	09770	01-03	5000	11-92 FC	0.00	269.55	970.79	DB
02/02/93	D.C.R.	42978	01-00	5000		167.55	0.00	1138.34	DB
02/04/93	D.C.R.	43005	01-00	2000		294.00	0.00	1432.34	DB
02/23/93	J.V.	10212	03-07	5000	10-92 FC BAL	0.00	74.39	1357.95	DB
02/23/93	J.V.	10212	03-08	5000	11-92 FC BAL	0.00	85.15	1272.70	DB
02/23/93	J.V.	10212	03-09	5000	12-92 FC BAL	0.00	80.15	1192.65	DB

02/23/93	J.V.	10243	01-04	2000	12-92 FC	0.00	185.00	1007.65	DB
02/23/93	J.V.	10243	01-05	5000	12-92 FC	0.00	269.55	738.10	DB
03/02/93	D.C.R.	43218	01-00	5000		276.55	0.00	1014.65	DB
03/04/93	D.C.R.	43248	01-00	2000		185.00	0.00	1199.65	DB
03/16/93	J.V.	10586	01-06	2000	1-93 FC	0.00	294.00	905.65	DB
03/16/93	J.V.	10586	01-07	5000	1-93 FC	0.00	276.55	629.10	DB
04/02/93	D.C.R.	43492	01-00	5000		167.55	0.00	796.65	DB
04/05/93	D.C.R.	43502	01-00	2000		185.00	0.00	981.65	DB
04/26/93	J.V.	11234	01-07	2000	2-93 FC	0.00	185.00	796.65	DB
04/26/93	J.V.	11234	01-08	5000	2-93 FC	0.00	167.55	629.10	DB
05/03/93	D.C.R.	43765	01-00	5000		276.55	0.00	905.65	DB
05/04/93	D.C.R.	43777	01-00	2000		185.00	0.00	1090.65	DB
05/30/93	J.V.	11788	01-08	2000	3-93 FC	0.00	185.00	905.65	DB
05/30/93	J.V.	11788	01-09	5000	3-93 FC	0.00	276.55	629.10	DB
06/02/93	D.C.R.	44008	01-00	5000		276.55	0.00	905.65	DB
06/04/93	D.C.R.	44038	01-00	2000		185.00	0.00	1090.65	DB
06/28/93	J.V.	12098	01-08	2000	4-93 FC	0.00	185.00	905.65	DB
06/28/93	J.V.	12098	01-09	5000	4-93 FC	0.00	167.55	738.10	DB
07/02/93	D.C.R.	44264	01-00	5000		276.55	0.00	1014.65	DB
07/07/93	D.C.R.	44289	01-01	2000		185.00	0.00	1199.65	DB
07/26/93	J.V.	00072	01-07	2000	5-93 FC	0.00	185.00	1014.65	DB
07/26/93	J.V.	00072	01-08	5000	5-93 FC	0.00	276.55	738.10	DB
08/02/93	D.C.R.	44517	01-00	5000		276.55	0.00	1014.65	DB

08/04/93	D.C.R.	44543	01-00	2000		185.00	0.00	1199.65	DB
08/31/93	J.V.	00488	02-01	2000	6-93 FC	0.00	185.00	1014.65	DB
08/31/93	J.V.	00488	02-02	5000	6-93 FC	0.00	276.55	738.10	DB
09/02/93	D.C.R.	44785	01-00	5000		276.55	0.00	1014.65	DB
09/07/93	D.C.R.	44805	01-00	2000		185.00	0.00	1199.65	DB
09/30/93	J.V.	00787	02-01	2000	7-93 FC	0.00	185.00	1014.65	DB
09/30/93	J.V.	00787	02-02	5000	7-93 FC	0.00	276.55	738.10	DB
10/04/93	D.C.R.	45037	01-01	5000		276.55	0.00	1014.65	DB
10/06/93	D.C.R.	45042	01-01	2000		185.00	0.00	1199.65	DB

REPORT DATE:
PURGE DATE: 11/01/93
PAGE: 2

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION
PURGE REPORT FOR THE CLIENT TRUST FUND TRANSACTIONS

CLIENT: FILBECK, JENNIFER L
PIC: FILBELJL011677A

DATE	DOCUMENT	NUMBER	TRANS	REV	DESCRIPTION	DEBIT	CREDIT	BALANCE
10/29/93	J.V.	01216	02-01	2000	8-93 FC	0.00	185.00	1014.65 DB
10/29/93	J.V.	01216	02-02	5000	8-93 FC	0.00	276.55	738.10 DB

256

REPORT DATE: 10/21/94
PURGE DATE: 07/01/94
PAGE: 1

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION
PURGE REPORT FOR THE CLIENT TRUST FUND TRANSACTIONS

CLIENT: FILBECK, JENNIFER L
PIC: FILBELJL011677A

DATE	DOCUMENT	NUMBER	TRANS	REV	DESCRIPTION	DEBIT	CREDIT	BALANCE
11/01/93	D.C.R.	00000			BAL FWD	738.10	0.00	738.10 DB
11/03/93	D.C.R.	45307	01-01	5000		276.55	0.00	1014.65 DB
11/04/93	D.C.R.	45340	01-01	2000		185.00	0.00	1199.65 DB
11/30/93	J.V.	01445	02-03	2000	9-93 FC	0.00	185.00	1014.65 DB
11/30/93	J.V.	01445	02-04	5000	9-93 FC	0.00	276.55	738.10 DB
12/03/93	D.C.R.	45572	01-00	5000		276.55	0.00	1014.65 DB
12/06/93	D.C.R.	45595	01-00	2000		185.00	0.00	1199.65 DB
12/30/93	J.V.	01858	02-07	2000	10-93 FC	0.00	185.00	1014.65 DB
12/30/93	J.V.	01858	02-08	5000	10-93 FC	0.00	276.55	738.10 DB
01/04/94	D.C.R.	45799	02-00	5000		283.55	0.00	1021.65 DB
01/04/94	D.C.R.	45810	02-00	2000		190.00	0.00	1211.65 DB

257

01/31/94	J.V.	02234	03-00	2000	11/93 FC	0.00	185.00	1026.65	DB
01/31/94	J.V.	02234	03-01	5000	11/93 FC	0.00	276.55	750.10	DB
02/02/94	D.C.R.	46070	02-00	5000		283.55	0.00	1033.65	DB
02/04/94	D.C.R.	46089	02-00	2000		190.00	0.00	1223.65	DB
02/08/94	D.C.R.	46116	01-00	2000		112.00	0.00	1335.65	DB
02/28/94	J.V.	02627	03-03	2000	12-93 FC	0.00	190.00	1145.65	DB
02/28/94	J.V.	02627	03-04	5000	12-93 FC	0.00	276.55	869.10	DB
03/02/94	D.C.R.	46312	02-00	5000		272.55	0.00	1141.65	DB
03/04/94	D.C.R.	46332	02-00	2000		302.00	0.00	1443.65	DB
03/31/94	J.V.	03057	03-03	2000	1-94 FC	0.00	190.00	1253.65	DB
03/31/94	J.V.	03057	03-04	5000	1-94 FC	0.00	283.55	970.10	DB
04/04/94	D.C.R.	46618	03-00	2000		302.00	0.00	1272.10	DB
04/05/94	D.C.R.	46633	02-00	5000		171.55	0.00	1443.65	DB
04/29/94	J.V.	03343	03-03	2000	2-94 FC	0.00	277.88	1165.77	DB
04/29/94	J.V.	03343	03-04	5000	2-94 FC	0.00	283.55	882.22	DB
05/02/94	D.C.R.	46898	02-00	5000		126.20	0.00	1008.42	DB
05/05/94	D.C.R.	46917	02-00	2000		302.00	0.00	1310.42	DB
05/31/94	J.V.	03750	02-00	2000	3/94 FC	0.00	277.88	1032.54	DB
05/31/94	J.V.	03750	02-01	5000	3/94 FC	0.00	283.55	748.99	DB
06/03/94	D.C.R.	47190	02-00	5000		126.20	0.00	875.19	DB
06/06/94	D.C.R.	47219	02-00	2000		302.00	0.00	1177.19	DB
06/28/94	J.V.	04037	03-00	2000	4/94 FC	0.00	302.00	875.19	DB
06/28/94	J.V.	04037	03-01	5000	4/94 FC	0.00	267.59	607.60	DB

REPORT DATE: 08/10/95
PURGE DATE: 05/01/95
PAGE: 1

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION
PURGE REPORT FOR THE CLIENT TRUST FUND TRANSACTIONS

CLIENT: FILBECK, JENNIFER L
PIC: FILBELJL011677A

DATE	DOCUMENT	NUMBER	TRANS	REV	DESCRIPTION	DEBIT	CREDIT	BALANCE	
07/01/94	D.C.R.	00000			BAL FWD	607.60	0.00	607.60	DB
07/06/94	D.C.R.	47458	02-00	5000		150.25	0.00	757.85	DB
07/06/94	D.C.R.	47463	02-00	2000		302.00	0.00	1059.85	DB
07/28/94	J.V.	04389	03-00	2000	MAY 1994	0.00	302.00	757.85	DB
07/28/94	J.V.	04389	03-01	5000	MAY 1994	0.00	126.20	631.65	DB
08/03/94	D.C.R.	47723	02-00	5000		171.55	0.00	803.20	DB
08/04/94	D.C.R.	47748	02-00	2000		302.00	0.00	1105.20	DB
08/26/94	J.V.	04904	03-00	2000	JUNE 94 FC	0.00	302.00	803.20	DB
08/26/94	J.V.	04904	03-01	5000	JUNE 94 FC	0.00	203.45	599.75	DB

09/02/94	D.C.R.	48053	02-00	5000		171.55	0.00	771.30	DB
09/06/94	D.C.R.	48064	02-00	2000		302.00	0.00	1073.30	DB
09/30/94	J.V.	05401	03-00	2000	JULY 94 FC	0.00	302.00	771.30	DB
09/30/94	J.V.	05401	03-01	5000	JULY 94 FC	0.00	150.25	621.05	DB
10/03/94	D.C.R.	48314	02-00	5000		171.55	0.00	792.60	DB
10/04/94	D.C.R.	48331	01-00	2000		302.00	0.00	1094.60	DB
10/25/94	J.V.	05740	03-00	2000	8\94 FC	0.00	302.00	792.60	DB
10/25/94	J.V.	05740	03-01	5000	8\94 FC	0.00	171.55	621.05	DB
11/03/94	D.C.R.	48630	02-00	5000		171.55	0.00	792.60	DB
11/07/94	D.C.R.	48642	02-00	2000		302.00	0.00	1094.60	DB
11/25/94	J.V.	06042	03-00	2000	9\94 FC	0.00	302.00	792.60	DB
11/25/94	J.V.	06042	03-01	5000	9\94 FC	0.00	171.55	621.05	DB
12/06/94	D.C.R.	48887	01-00	5000		171.55	0.00	792.60	DB
12/07/94	D.C.R.	48899	02-00	2000		302.00	0.00	1094.60	DB
12/30/94	J.V.	06484	03-00	2000	10\94 FC	0.00	302.00	792.60	DB
12/30/94	J.V.	06484	03-01	5000	10\94 FC	0.00	171.55	621.05	DB
01/04/95	D.C.R.	49147	01-00	5000		175.55	0.00	796.60	DB
01/06/95	D.C.R.	49185	01-00	2000		310.00	0.00	1106.60	DB
01/27/95	J.V.	06838	03-00	2000	NOV 94 FC	0.00	302.00	804.60	DB
01/27/95	J.V.	06838	03-01	5000	NOV 94 FC	0.00	171.55	633.05	DB
02/03/95	D.C.R.	49430	02-00	5000		183.55	0.00	816.60	DB
02/27/95	J.V.	07143	03-00	2000	DEC 94 FC	0.00	310.00	506.60	DB

02/27/95	J.V.	07143	03-01	5000	DEC 94 FC	0.00	171.55	335.05	DB
03/03/95	D.C.R.	49689	02-00	5000		175.55	0.00	510.60	DB
03/22/95	INVOICE	C7186	C7191	5000		0.00	1346.00	835.40	CR
03/30/95	J.V.	07534	03-00	2000	JAN 95 FC	0.00	310.00	1145.40	CR
03/30/95	J.V.	07534	03-01	5000	JAN 95 FC	0.00	175.75	1321.15	CR
04/05/95	D.C.R.	50007	02-00	5000		465.55	0.00	855.60	CR

REPORT DATE: 01/10/96
PURGE DATE: 11/01/95
PAGE: 1

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION
PURGE REPORT FOR THE CLIENT TRUST FUND TRANSACTIONS

CLIENT: FILBECK, JENNIFER L
PIC: FILBELJL011677A

DATE	DOCUMENT	NUMBER	TRANS	REV	DESCRIPTION	DEBIT	CREDIT	BALANCE
05/01/95	D.C.R.	00000			BAL FWD	0.00	855.60	855.60 CR
05/03/95	D.C.R.	50260	01-01	5000		465.55	0.00	390.05 CR
05/31/95	J.V.	08258	01-00	2000	1\94 COR ERR	112.00	0.00	278.05 CR
05/31/95	J.V.	08258	01-01	2000	2\94 COR ERR	112.00	0.00	166.05 CR
05/31/95	J.V.	08258	01-02	2000	3\94 COR ERR	112.00	0.00	54.05 CR
05/31/95	J.V.	08258	01-03	2000	4\94 COR ERR	112.00	0.00	57.95 DB
05/31/95	J.V.	08258	01-04	2000	5\94 COR ERR	112.00	0.00	169.95 DB
05/31/95	J.V.	08258	01-05	2000	6\94 COR ERR	112.00	0.00	281.95 DB
05/31/95	J.V.	08258	01-06	2000	7\94 COR ERR	112.00	0.00	393.95 DB
05/31/95	J.V.	08258	01-07	2000	8\94 COR ERR	112.00	0.00	505.95 DB

05/31/95	J.V.	08258	01-08	2000	9\94 COR ERR	112.00	0.00	617.95 DB
05/31/95	J.V.	08258	01-09	2000	10\94 COR ERR	112.00	0.00	729.95 DB
05/31/95	J.V.	08258	01-10	2000	11\94 COR ERR	112.00	0.00	841.95 DB
05/31/95	J.V.	08258	01-11	2000	12\94 COR ERR	114.00	0.00	955.95 DB
05/31/95	J.V.	08258	01-12	2000	1\95 COR ERR	310.00	0.00	1265.95 DB
06/02/95	D.C.R.	50534	02-00	5000		465.55	0.00	1731.50 DB
07/03/95	D.C.R.	50797	02-00	5000		465.55	0.00	2197.05 DB
08/02/95	D.C.R.	51072	02-00	5000		465.55	0.00	2662.60 DB
08/10/95	INVOICE	C1770	C1774	5000		0.00	465.55	2197.05 DB
08/31/95	J.V.	00383	01-00	5000	COR ERR 6\94	24.05	0.00	2221.10 DB
09/05/95	D.C.R.	51357	01-01	5000		465.55	0.00	2686.65 DB
09/29/95	J.V.	00649	01-01	5000	02-95 FC	0.00	183.55	2503.10 DB
09/29/95	J.V.	00649	01-02	5000	03-95 FC	0.00	175.55	2327.55 DB
09/29/95	J.V.	00649	01-03	5000	04-95 FC	0.00	465.55	1862.00 DB
09/29/95	J.V.	00649	01-04	5000	05-95 FC	0.00	465.55	1396.45 DB
09/29/95	J.V.	00649	01-05	5000	06-95 FC	0.00	465.55	930.90 DB
10/03/95	D.C.R.	51612	01-01	5000		419.00	0.00	1349.90 DB
10/16/95	J.V.	00926	01-01	5000	08-95 FC	0.00	465.35	884.55 DB
10/23/95	D.C.R.	51797	01-01	5000		46.55	0.00	931.10 DB

REPORT DATE: 10/09/96
PURGE DATE: 07/01/96
PAGE: 1

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION
PURGE REPORT FOR THE CLIENT TRUST FUND TRANSACTIONS

CLIENT: FILBECK, JENNIFER L
PIC: FILBELJL011677A

DATE	DOCUMENT	NUMBER	TRANS	REV	DESCRIPTION	DEBIT	CREDIT	BALANCE	
11/01/95	D.C.R.	0000			BAL FWD	931.10	0.00	931.10	DB
11/02/95	D.C.R.	51906	01-01	5000		464.42	0.00	1395.52	DB
12/05/95	D.C.R.	52178	01-01	5000		464.42	0.00	1859.94	DB
12/29/95	J.V.	01692	01-01	5000	09-95 FC	0.00	486.00	1373.94	DB
12/29/95	J.V.	01692	01-02	5000	10-95 FC	0.00	486.00	887.94	DB
01/03/96	D.C.R.	52414	01-01	5000		476.86	0.00	1364.80	DB
01/17/96	J.V.	01918	01-01	5000	11-95 FC	0.00	464.42	900.38	DB
01/26/96	J.V.	02004	01-01	5000	09-95 C/E	20.45	0.00	920.83	DB
01/26/96	J.V.	02004	01-02	5000	10-95 C/E	20.45	0.00	941.28	DB
02/06/96	D.C.R.	52712	01-01	5000		476.86	0.00	1418.14	DB

02/20/96	J.V.	02280	01-01	5000	12-95 FC	0.00	464.42	953.72	DB
03/05/96	D.C.R.	52962	01-01	5000		476.86	0.00	1430.58	DB
03/26/96	J.V.	02714	01-01	5000	01-96 FC	0.00	476.86	953.72	DB
04/03/96	D.C.R.	53231	01-01	5000		476.86	0.00	1430.58	DB
04/15/96	J.V.	02993	01-01	5000	02-96 FC	0.00	476.86	953.72	DB
05/06/96	D.C.R.	53526	01-01	5000		476.86	0.00	1430.58	DB
05/15/96	J.V.	03357	01-01	5000	03-96 FC	0.00	476.86	953.72	DB
06/03/96	D.C.R.	53771	01-01	5000		476.86	0.00	1430.58	DB
06/14/96	J.V.	03674	01-01	5000	04-96 FC	0.00	476.86	953.72	DB
06/19/96	D.C.R.	53928	01-01	2000		2186.00	0.00	3139.72	DB

REPORT DATE: 02/06/98
PAGE: 1

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION
PURGE REPORT FOR THE CLIENT TRUST FUND TRANSACTIONS

CLIENT: FILBECK, JENNIFER L
PERSON ID: 269486
PIC:. FILBELJL011677A

DATE	DOCUMENT	NUMBER	TRANS	REV	DESCRIPTION	DEBIT	CREDIT	BALANCE
07/01/96	D.C.R.	00000			BAL FWD	3139.72	0.00	3139.72 DB
07/02/96	D.C.R.	54039	01-01	5000		295.86	0.00	3435.58 DB
07/05/96	D.C.R.	54074	01-01	2000		201.00	0.00	3636.58 DB
07/05/96	D.C.R.	54074	01-02	2000		201.00	0.00	3837.58 DB
07/12/96	J.V.	03951	01-01	5000	05-96 FC	0.00	476.86	3360.72 DB
07/23/96	INVOICE	C4701	C4701	5000		0.00	476.86	2883.86 DB
08/06/96	D.C.R.	54361	03-00	5000		295.86	0.00	3179.72 DB
08/07/96	D.C.R.	54374	03-00	2000		201.00	0.00	3380.72 DB
08/10/96	J.V.	04702	03-01	2000	7-95 FC	0.00	397.00	2983.72 DB
08/10/96	J.V.	04702	03-02	2000	8-95 FC	0.00	107.31	2876.41 DB
08/10/96	J.V.	04702	03-03	2000	9-95 FC	0.00	107.11	2769.30 DB
08/10/96	J.V.	04702	03-04	2000	10-95 FC	0.00	107.11	2662.19 DB
08/10/96	J.V.	04702	03-05	2000	11-95 FC	0.00	108.24	2553.95 DB
08/10/96	J.V.	04702	03-06	2000	12-95 FC	0.00	108.24	2445.71 DB
08/10/96	J.V.	04702	03-07	2000	1-96 FC	0.00	95.80	2349.91 DB
08/10/96	J.V.	04702	03-08	2000	2-96 FC	0.00	95.80	2254.11 DB
08/10/96	J.V.	04702	03-09	2000	3-96 FC	0.00	95.80	2158.31 DB
08/10/96	J.V.	04702	03-10	2000	4-96 FC	0.00	95.80	2062.51 DB
08/10/96	J.V.	04702	03-11	2000	5-96 FC	0.00	95.80	1966.71 DB
08/10/96	J.V.	04702	03-12	2000	6-96 FC	0.00	572.66	1394.05 DB
09/05/96	D.C.R.	54618	03-00	5000		295.86	0.00	1689.91 DB
09/06/96	D.C.R.	54634	02-00	2000		201.00	0.00	1890.91 DB
09/13/96	J.V.	04960	03-01	2000	7-96 FC	0.00	288.25	1602.66 DB
09/13/96	J.V.	04960	03-02	5000	7-96 FC	0.00	295.86	1306.80 DB
10/03/96	D.C.R.	54875	04-00	5000		295.86	0.00	1602.66 DB
10/07/96	D.C.R.	54903	04-00	2000		201.00	0.00	1803.66 DB
10/14/96	J.V.	05417	03-07	2000	8-96 FC	0.00	288.25	1515.41 DB
10/14/96	J.V.	05417	03-08	5000	8-96 FC	0.00	295.86	1219.55 DB
11/04/96	D.C.R.	2	01-00	5000	11/96	295.86	0.00	1515.41 DB
11/07/96	D.C.R.	5	01-00	2000	10/96	201.00	0.00	1716.41 DB

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION
PURGE REPORT FOR THE CLIENT TRUST FUND TRANSACTIONS

CLIENT: FILBECK, JENNIFER L
PIC: FILBELJL011677A

DATE	DOCUMENT	NUMBER	TRANS	REV	DESCRIPTION	DEBIT	CREDIT	BALANCE
11/15/96	J.V.	05778	01-01	2000	9/96 FC	0.00	288.25	1428.16 DB
11/15/96	J.V.	05778	01-02	5000	9/96 FC	0.00	295.86	1132.30 DB
12/06/96	D.C.R.	20	01-00	5000	12/96	295.86	0.00	1428.16 DB
12/13/96	D.C.R.	24	01-00	5000	12/96	21.82	0.00	1449.98 DB
12/13/96	J.V.	06168	03-08	2000	10-96 FC	0.00	146.40	1303.58 DB
12/13/96	J.V.	06168	03-09	5000	10-96 FC	0.00	295.86	1007.72 DB
01/06/97	D.C.R.	35	01-00	5000	01/97	304.75	0.00	1312.47 DB
01/15/97	J.V.	06464	01-01	2000	11/96 FC	0.00	146.40	1166.07 DB
01/15/97	J.V.	06464	01-02	5000	11/96 FC	0.00	295.86	870.21 DB

268

02/05/97	D.C.R.	55	01-00	5000	02/97	305.55	0.00	1175.76 DB
02/10/97	J.V.	06822	04-01	2000	12-96 FC	0.00	124.58	1051.18 DB
02/10/97	J.V.	06822	04-02	5000	12-96 FC	0.00	317.68	733.50 DB
02/24/97	INVOICE	97055	G8598	5000		0.00	304.75	428.57 DB
02/24/97	INVOICE	97055	G8599	2000		0.00	123.20	305.55 DB
03/27/97	INVOICE	97086	G0291	5000		0.00	305.55	0.00 CR

269

REPORT DATE: 10/28/91
PURGE DATE: 08/01/91
PAGE: 1

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION
PURGE REPORT CLIENT MONEY MARKET TRANSACTIONS

CLIENT: FILBECK, JENNIFER L
PIC: FILBELJL011677A ACCOUNT D

DATE	TRANSACTION	DESCRIPTION	DEBIT	CREDIT	BALANCE
		BALANCE FORWARD			449.27 DB
11/30/90	INTEREST		2.44	0.00	451.71 DB
12/31/90	INTEREST		2.45	0.00	454.16 DB
01/31/91	INTEREST		2.24	0.00	456.40 DB
02/28/91	INTEREST		1.93	0.00	458.33 DB
03/31/91	INTEREST		2.14	0.00	460.47 DB
04/30/91	INTEREST		2.06	0.00	462.53 DB
05/31/91	INTEREST		2.15	0.00	464.68 DB
06/30/91	INTEREST		2.08	0.00	466.76 DB
07/31/91	INTEREST		2.16	0.00	468.92 DB

REPORT DATE: 08/13/92
PURGE DATE: 06/01/92
PAGE: 1

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION
PURGE REPORT CLIENT MONEY MARKET TRANSACTIONS

CLIENT: FILBECK, JENNIFER L
PIC: FILBELJL011677A ACCOUNT D

DATE	TRANSACTION	DESCRIPTION	DEBIT	CREDIT	BALANCE
		BALANCE FORWARD			468.92 DB
08/31/91	INTEREST		2.16	0.00	471.08 DB
09/30/91	INTEREST		2.11	0.00	473.19 DB
10/31/91	INTEREST		2.19	0.00	475.38 DB
11/30/91	INTEREST		2.08	0.00	477.46 DB
12/31/91	INTEREST		2.11	0.00	479.57 DB
01/31/92	INTEREST		1.99	0.00	481.56 DB
02/29/92	INTEREST		1.68	0.00	483.24 DB
03/31/92	INTEREST		1.75	0.00	484.99 DB
04/24/92	WITHDRAWAL	WITHDRAWAL	0.00	200.00	284.99 DB
04/30/92	INTEREST		1.58	0.00	286.57 DB
05/31/92	INTEREST		1.04	0.00	287.61 DB

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION
PURGE REPORT CLIENT MONEY MARKET TRANSACTIONS

CLIENT: FILBECK, JENNIFER L
PIC: FILBELJL011677A ACCOUNT D

DATE	TRANSACTION	DESCRIPTION	DEBIT	CREDIT	BALANCE
		BALANCE FORWARD			287.61 DB
06/30/92	INTEREST		1.04	0.00	288.65 DB
07/31/92	INTEREST		1.08	0.00	289.73 DB
08/24/92	INTEREST	CLOSING INT	0.84	0.00	290.57 DB
08/25/92	WITHDRAWAL	CLOSE ACCOUNT	0.00	290.57	0.00
08/31/92	INTEREST		0.00	0.00	0.00

A-19 State of Washington
INVOICE VOUCHER

Agency No.	Location Code

AGENCY NAME

Trust Fund Unit

CLAIMANT

SOCIAL SECURITY ADMINISTRATION,
FOR CLAIM 3 536-78-1326
PO BOX 19001
OLYMPIA, WA 98507

Date	Description	Amount	Agency Use
	To transfer funds from the trust fund account of Jennifer L. Filbeck, 1-16-77, due to overpayment from Social Security.	$342.55	SSI

Prepared By	Tele. #	Date	Agency Approval	Date
Dos. Date	Current Doc. No.	Reference Doc. No.	Vendor Number	Vendor Message	UBI Number
6/12/96			VOD1		

Trans Code	Program Index	Source	Amount	Invoice

Account Approval For Payment	Date	Warrant Total	Warrant Number

DEPARTMENT OF HEALTH AND HUMAS SERVICES
Social Security Administration

Refer to: 536-78-1326
P.O. Box 19001
Olympia, WA 98507

NOTICE OF OVERPAYMENT
February 8, 1989

Phone: (206) 753-9419

Secy, DSHS For
Jennifer L Filbeck
P O Box 9501
Olympia, WA 98504

Dear Secy, DSHS:

We are writing to let you know that we've paid you $342.55 too much Supplemental Security Income (SSI) money. The overpayment happened: from January, 1989 through February, 1989 because of your countable income.

You must pay us back unless we're wrong about the overpayment or we decide you shouldn't have to pay us back. This letter tells you what you can do if you think we're wrong about the overpayment or if you think you shouldn't have to pay us back. The last page of this letter has a detailed explanation of your overpayment.

IF WE DON'T HEAR FROM YOU IN THE NEXT 30 DAYS

We plan to collect this overpayment from your SSI checks. We will hold back $37.55 beginning May, 1989. from your SSI checks until your overpayment

is paid. If you ask for waiver or appeal in the next 30 days, we won't change your check until we decide your case.

IF YOU THINK YOU SHOULDN'T HAVE TO PAY US BACK

You may not have to pay us back. Sometimes we can waive an overpayment, which means you won't have to pay us back. We can do this if both of the following are true.

* It wasn't your fault that you got too much SSI money.

AND

* Paying us back would mean you can't pay your bills for food, clothing, housing, or medical care, or it would be unfair for some other reason.

If you think these are true about you, contact any Social Security Office. You can ask for waiver any time. We won't collect the overpayment while we decide if we can waive it.

If you call or come into the office, please have this notice available and ask for Mrs. Herbison.

Sincerely yours,
/s/
Alice Thursten
District Manager

Enclosure(s):
REFUND ENVELOPE

DO YOU THINK WE'RE WRONG?

If you think we're wrong, you have the right to appeal. We'll correct mistakes. We'll look at any new facts you have.

* You have 60 days to ask for an appeal. If you ask in the next 30 days, we won't change your check until we decide your appeal.

* Both the 30 day and 60 day periods start the day after you get this letter.

* To appeal, you must fill out a form called "request for Reconsideration." The for number is SSA-561. To get this form, contact one of our offices. We can help you fill out the form.

HOW TO APPEAL

There are three ways to appeal. You can pick the one you want. If you meet with us in person, it may help us decide your case.

* Case Review. You have the right to review the facts in your file. You can give us more facts to add to your file. Then we'll decide your case again. You won't meet with the person who decides your case.

* Informal Conference. You'll meet with the person who decides our case. You can tell that person why you think you're right. You can give us more

facts to help prove you're right. You can bring other people to help explain your case.

* Formal Conference. This is a meeting like an informal conference. The difference is we can make people come to help prove you're right. We can make them bring important papers about your case, even if they don't want to help you. You can questions these people at your meeting.

IF YOU WANT HELP WITH YOUR APPEAL

You may want help from a friend, lawyer, or someone else. There are groups that can find you a lawyer. Some can give you a free lawyer. We can give you the names of these groups.

HOW TO PAY US BACK

There are two ways you can pay us back.

* As we said earlier, we plan to hold back $37.55 beginning May, 1989. from your SSI check until you've paid us back. This is 10 percent of your income or the amount of your check if it is less. This is the most we can hold back without your consent. Contact us if you want a different amount held back.

* Another way to pay us back is to send us a check or money order for the full amount of your overpayment. Paying us this way is voluntary. Make your check out to the Social Security Administration. Be sure to put your Social

Security number on the check. If you get SSI for someone else, be sure to put that person's Social Security number on the check. Please us the enclosed envelope to mail your check or money order to us. Also, be sure to enclose the payment stub with your check or money order.

IF YOU HAVE ANY QUESTIONS

If you have any questions, you should call, write, or visit any Social Security office. If you visit an office, please bring this letter. It will help us answer your questions.

A DETAILED EXPLANATION OF YOUR OVERPAYMENT

Months:	Amounts Paid:	Amounts Due:
January, 1989	$290.55	0
February, 1989	290.55	238.55

NOTE: A REPRESENTATIVE PAYEE MAY BE HELD PERSONALLY LIABLE FOR REPAYMENT OF AN OVERPAYMENT UNLESS (1) THE PAYMENTS WERE USED FOR THE BENEFIT OF THE PERSON FOR WHOM THEY WERE RECEIVEING PAYMENT, AND (2) THE REPRESENTATIVE PAYEE IS WITHOUT FAULT IN CONNECTION WITH THE OVERPAYMENT. IF YOU BELIEVE THAT YOU, AS A REPRESENTATIVE PAYEE, ARE NOT LIABLE FOR REPAYMENT, PLEASE CONTACT US.

A-19 State of Washington Revenue Refund	Agency No.	Location Code
	3000	

AGENCY NAME
Department of Social & Health Services OAS/Trust Fund Unit PO Box 9501 Olympia, WA - 98507-9501
CLAIMANT
SOCIAL SECURITY ADMINISTRATION, FOR CLAIM #535-58-8055 3700 MARTIN WAY, SUITE 108 OLYMPIA, WA 98506

Date	Description	Amount	Agency Use
	TO TRANSFER FUNDS FROM THE TRUST FUND ACCOUNT OF JENNIFER L. FILBECK, 1-16-77, DUE TO OVERPAYMENT FOR THE MONTHS OF 1/94-12/94.	$1,346.00	(SSA)

Prepared By	Tele. #	Date	Agency Approval	Date
//s// Karen Kegley			//s//	3/20/95

Dos. Date	Print Run Date	Current Doc. No.	Reference Doc. No.	Vendor Number	Vendor Message	UBI Number
3/17/95				VOD1		

Trans Code	Program Index	Source	Amount	Invoice
198	A0000	410000	$1,346.00	FILBECK

Account Approval For Payment	Date	Warrant Total	Warrant Number
		$1,346.00	

Social Security Administration
Retirement, Survivors, and Disability Insurance
Notice of Overpayment

Office of Disability and
International Operations
1500 Woodlawn Drive
Baltimore, Maryland 21241
Date: January 15, 1995
Claim Number: 535-58-8055 HC1

Secretary
DSHS
For Jennifer (FILBECK) *handwritten*
Box 9501
Olympia WA 98504

We have determined that you received $1,346.00 more in Social Security benefits than you were due.

We have determined that Amy Hunter should have remained entitled to benefits on this account January 1994 on. As a result, Jennifer's benefits should have been $190.00 for January 1994 through November 1994 and $196.00 for December 1994. She received $302.00 for January 1994 through November 1994 and $310.00 for December 1994, she was overpaid $1,346.00.

How To Pay Us Back

You should refund this overpayment within 30 days. Please make your check or money order payable to "Social Security Administration" and send it to us in

the enclosed envelope. Always include your claim number (as shown

SEE NEXT PAGE
535-58-8055 HC1

above) on the check or money order. If you cannot refund the full $1,346.00 now, you should submit: (a) a partial payment; (b) an explanation of your financial circumstances; and (c) a definite plan for repaying the balance.

If You Thing You Should Not Have To Pay Us Back

You may not have to pay us back. Sometimes we can waive the collection of an overpayment, which means you will not have to pay us back. For us to waive the collection of your overpayment, two things must be true.

- If was not your fault that you got too much Social Security money.

AND

- Paying us back would mean you cannot pay your bills for food, clothing, housing, medical care, or other necessary expenses, or it would be unfair for some other reason.

If you think these are true about you, contact any Social Security office. You can ask for waiver at any time by filling out the waiver form. The form

number is SSA-632-BK. We will not collect the overpayment while we decide if we can waive collection.

You may need to show us proof of your monthly income, expenses, and assets. Examples are pay stubs, pension records, rent receipts, utility bills and bank statements.

SEE NEXT PAGE
535-58-8055 HC1

Do You Disagree With The Decision?

If you disagree with the decision, you have the right to appeal. A person who did not make the first decision will decide your case. We will review your case again and consider any new facts you have.

- You have 60 days to ask for an appeal. If you ask in the next 30 days, you will not have to pay us back until we decide your case.

- Both the 30- and 60-day periods start the day after you receive this letter. We assume you got this letter 5 days after the date on it, unless you show us that you did not get it within the 5-day period.

- You must have a good reason if you wait more than 60 days to ask for an appeal.

- You have to ask for an appeal in writing. We will ask you to sign a form called, "Request For Reconsideration." The form number is SSA-561-U2. To get this form, contact one of our offices. We can help you fill out the form.

We are enclosing a pamphlet called "Important Information About Your Appeal and Waiver Rights." Please be sure to read it.

Even if you do not want to request reconsideration or waiver, call us at 1-800-772-1213 if you have any questions.

SEE NEXT PAGE
535-58-8055 HC1

If You Want Help With Your Appeal

You can have a friend, lawyer or someone else help you. There are groups that can help you find a lawyer or give you free legal services if you qualify. There are also lawyers who do not charge unless you win your appeal. Your local Social Security office has a list of groups that can help you with your appeal.

If you get someone to help you, you should let us know. If you hire somone, we must approve the fee before he or she can collect it. And if you hire a lawyer, we will withhold up to 25 percent of any past due benefits to pay toward the fee.

If You Have Any Questions

If you have any questions, you may call us toll-free at 1-800-772-1213, or call your local Social Security

office at 1-206-534-9318. We can answer most questions over the phone. You can also write or visit any Social Security office. The office that serves your area is located at:

SSA DISTRICT OFFICE
SUITE 108
MARTIN WAY EAST
OLYMPIA, WA 98506-0000

If you do call or visit an office, please have this letter with you. It will help us answer your questions. Also, if you plan to visit an office, you many call ahead to make an appointment. This will help us serve you more quickly when you arrive at the office.

SEE NEXT PAGE
535-58-8055 HC1

/s/
Joseph R. Muffolett
Director

Enslosure(s):
Refune-envelope-5
Form SSA-3105

A-19	State of Washington Revenue Refund

Agency No.	Location Code
3000	

AGENCY NAME
Department of Social & Health Services OAS/Trust Fund Unit PO Box 9501 Olympia, WA 98507-9501
CLAIMANT
SOCIAL SECURITY, CLAIM # 536-78-1326 3700 MARTIN WAY, SUITE 108 OLYMPIA, WA 98506

Date	Description	Amount	Agency Use
	TO TRANSFER THE 7/95 SSIPAYMENT FROM THE TRUST FUND ACCOUNT OF JENNIFER L. FILBECK, 1-16-77.	$465.55	SSI

Prepared By	Tele. #	Date	Agency Approval	Date
//s// Karen Kegley			//s//	8/8/95

Dos. Date	Print Run Date	Current Doc. No.	Reference Doc. No.	Vendor Number	Vendor Message	UBI Number
8/7/95				VOD1		

Trans Co..:	Program Index	Source	Amount	Invoice
198	A0000	410000	$465.55	FILBECK

Account Approval For Payment	Date	Warrant Total	Warrant Number
		$465.55	

Social Security Administration
Supplemental Security Income
Notice of Overpayment

Date: July 18, 1995
Claim Number: 536-78-1326 DC

918
SECY DSHS FOR
JENNIFER L FILBECK
PO BOX 9501
OLYMPIA WA 98507-9501

We are writing to let you know that we have paid JENNIFER L. FILBECK $465.55 too much Supplemental Security Income(SSI) money. The overpayment happened in July 1995. She was overpaid because of her Social Security benefits. – (appears client rec'd her own SSA payment.) *handwritten*

Later in this letter, we'll give you a detailed explanation of her overpayment.

She must pay us back unless we decide she shouldn't have to pay us back or we're wrong about the overpayment. If you think she shouldn't have to pay us back or you disagree with the decision about the overpayment, you can:

- Ask for a waiver,
- Ask for an appeal, or

- Do both.

SSA-L8170
536-78-1326
07/18/95 Page 2

This letter will tell you more about these things you can do.

If We Don't Hear From You In The Next 30 Days

We plan to collect this overpayment from her SSI checks. We'll hold back $46.55 each month starting with October 1995 until she has paid us back. If you ask for waiver or appeal in the next 30 days, we won't change her check until we decide her case.

If You Think JENNIFER L. FILBECK Shouldn't Have To Pay Us Back

She may not have to pay us back. Sometimes we can waive an overpayment, which means she won't have to pay us back. We can do this if <u>both</u> of the following are true.

- It wasn't her fault that she got too much SSI money.

AND

- Paying us back would mean she can't pay her bills for food, clothing, housing or medical care, or it would be unfair for some other reason.

If you think these are true about her, contact any Social Security office. You can ask for a waiver any time by asking your Social Security office to fill out the waiver form. The waiver form number is SSA-632. We won't collect the overpayment while we decide if we can waive it.

SSA-L8170
536-78-1326
07/18/95 Page 3

Special Message For Representative Payees

If the overpayment is not repaid by JENNIFER L. FILBECK or from her funds, we will ask you to repay it from your own money. If she begins to repay us, but stops before the overpayment is repaid, we will ask you for any amount remaining. But we won't ask you to repay us if both of the following are true.

- You used the SSI check(s) for her needs.

AND

- It was not your fault that she was overpaid.

Please let us know as soon as possible if you think both of these facts are true.

In addition, we won't ask you to repay us from your own money for any month(s) of overpayment in which you were not the representative payee. If you were not the payee for any of the overpayment

months, please tell us. If there was a payee before you, and you have that person's name and address, please give it to us. You can contact any Social Security office.

Do you Disagree with The Decision?

If you disagree with the decision, you have the right to appeal. We will review your case and consider any new facts you have.

SSA-L8170
536-78-1326
07/18/95 Page 4

- You have 60 days to ask for an appeal. **If you ask in the next 30 days, we won't change her check until we decide her case.**

- Both the 30 day and 60 day periods start the day after you get this letter. We assume you got this letter 5 days after the date on it unless you show us that you did not get it within the 5-day period.

- You must have a good reason for waiting more than 60 days to ask for an appeal.

- To appeal, you must fill out a form called "Request for Reconsideration." The form number is SSA-561. To get this form, contact one of our offices. We can help you fill out the form.

How to Appeal

There are three ways to appeal. **You can pick the one you want. If you meet with us in person, it may help us decide her case.**

- **Case Review.** You have a right to review the facts in her file. You can give us more facts to add to her file. Then we'll decide her case again. You won't meet with the person who decides her case.

- **Informal Conference.** You'll meet with the person who decides her case. You can tell that person why you think you're right. You can give us more facts to help prove you're right. You can bring other people to help explain her case.

- **Formal Conference.** This is a meeting like an informal conference. The difference is we can make people come to help prove you're right. We can make them bring important papers about her case, even if they don't want to help you. You can question these people at your meeting.

If You Want Help With Your Appeal

You can have a friend, lawyer or someone else help you. There are groups that can help you find a lawyer or give you free legal services if you qualify. There are also lawyers who do not charge unless you win your appeal. Your local Social Security office has a list of groups that can help you with your appeal

If you get someone to help you, you should let us know. If you hire someone, we must approve the fee before he or she can collect it.

How To Pay Us Back

There are two ways you can pay us back.

- As we said earlier, we plan to hold back money from her SSI check. We'll hold back $46.55 each month starting with October 1995 until she has paid us back. This is not more than 10 percent of her total income. Ten percent is the most we can hold back without your consent. Contact us if you want a different amount held back.

- Another way to pay us back is to send us a check or money order for the full amount of her overpayment of $465.55. Paying us this way is **voluntary**. Make your check or money order out to the Social Security Administration. Be sure to put her Social Security number on it. Please use the enclosed envelope to mail the check or money order to us. Also, be sure to enclose the payment stub with your check or money order.

A Detailed Explanation Of Her Overpayment

Overpayment Summary

She was overpaid $465.55. The following table shows how her payment changed each month. The first column lists the month(s) we paid her incorrectly. The next column shows the amount we paid her for each month. The last column, "Correct Amount for Each Month," shows the amount we should have paid her for each month.

The SSI we paid her included some payments we made for her State. We show her total SSI below, and then the part of

this money that is from her State.

Month	Amount We Paid Each Month	Correct Amount for Each Month
July 1995	$465.55($7.55 from Washington)	$.00

Why She Was Overpaid

For the month(s) listed below, her income on our records was wrong. Because we didn't know about all her income, we paid her too much SSI.

Under "Type of Income," we list only the income which we corrected on our records. Under the column called "Amount We Used," we show the amount we used earlier to figure her payment. Under the column called "Correct Amount," we show the amount we should have used to figure her payment. Please check that column against her records. If the amount is wrong, the amount of the overpayment is wrong.

Month	Amount We Used	Correct Amount	Type of Income
July 1995	$.00	$1,176.00	Her Social Security benefits

PAYMENT STUB

- Please cut along the dotted line. Return the bottom portion of the stub with your payment.
- Please use the enclosed envelope to mail your payment to us.
- Be sure to tell us if you've changed your address.
- Do not send cash or stamps.

Please Cut Along The Dotted Line

- - - -

Social Security Administration
Supplemental Security Income
Notice of Overpayment

Date: July 04, 1996
Claim Number: 536-78-1326 DC

918
SECY DSHS FOR
JENNIFER L FILBECK
PO BOX 9501
OLYMPIA, WA 98507-9501

We are writing to let you know that we have paid JENNIFER L. FILBECK $476.86 too much Supplemental Security Income (SSI) money. The overpayment happened in June 1996. She was overpaid because of her Social Security benefits.

Later in this letter, we'll give you a detailed explanation of her overpayment.

She must pay us back unless we decide she shouldn't have to pay us back or we're wrong about the overpayment. If you think she shouldn't have to pay us back or you disagree with the decision about the overpayment, you can:

- Ask for a waiver,
- Ask for an appeal, or
- Do both.

This letter will tell you more about these things you can do.

If We Don't Hear From You In The Next 30 Days

We plan to collect this overpayment from her SSI checks. We'll hold back $47.68 each month starting with October 1996 until she has paid us back. If you ask for waiver or appeal in the next 30 days, we won't change her check until we decide her case.

SSA-L8170
536-78-1326
07/04/96

If You Think JENNIFER L. FILBECK Shouldn't Have To Pay Us Back

She may not have to pay us back. Sometimes we can waive an overpayment, which means she won't have to pay us back. We can do this if <u>both</u> of the following are true.

- It wasn't her fault that she got too much SSI money.

<u>AND</u>

- Paying us back would mean she can't pay her bills for food, clothing, housing or medical care, or it would be unfair for some other reason.

If you think these are true about her, contact any Social Security office. You can ask for a waiver any time by asking your Social Security office to fill out the waiver form. The waiver form number is SSA-

632. We won't collect the overpayment while we decide if we can receive it.

Special Message For Representative Payees

If the overpayment is not repaid by JENNIFER L. FILBECK or from her funds, we will ask you to repay it from your own money. If she begins to repay us, but stops before the overpayment is repaid, we will ask you for any amount remaining. But we won't ask you to repay us if both of the following are true.

- You used the SSI check(s) for her needs.

AND

- It was not your fault that she was overpaid.

Please let us know as soon as possible if you think both of these facts are true.

SSA-L8170
536-78-1326
07/04/96

In addition, we won't ask you to repay us from your own money for any month(s) of overpayment in which you were not the representative payee. If you were not the payee for any of the overpayment months, please tell us. If you were not the payee for any of the overpayment months, please tell us. If there was a payee before you, and you have that

person's name and address, please give it to us. You can contact any Social Security office.

Do You Disagree With The Decision?

If you disagree with the decision, you have the right to appeal. We will review your case and consider any new facts you have.

- You have 60 days to ask for an appeal. **If you ask in the next 30 days, we won't change her check until we decide her case.**

- Both the 30 day and 60 day periods start the day after you get this letter. We assume you got this letter 5 days after the date on it unless you show us that you did not get it within the 5-day period.

- You must have a good reason for waiting more than 60 days to ask for an appeal.

- To appeal, you must fill out a form called "Request for Reconsideration." The form number is SSA-561. To get this form, contact one of our offices. We can help you fill out the form.

How To Appeal

There are three ways to appeal. **You can pick the one you want. If you meet with us in person, it may help us decide her case.**

SSA-L8170
536-78-1326
07/04/96

- **Case Review.** You have a right to review the facts in her file. You can give us more facts to add to her file. Then we'll decide her case again. You won't meet with the person who decides her case.
- **Informal Conference.** You'll meet with the person who decides her case. You can tell that person why you think you're right. You can give us more facts to help prove you're right. You can bring other people to help explain her case.
- **Formal Conference.** This is a meeting like an informal conference. The difference is we can make people come to help prove you're right. We can make them bring important papers about her case, even if they don't want to help you. You can question these people at your meeting.

If You Want Help With Your Appeal

You can have a friend, lawyer, or someone else help you. There are groups that can help you find a lawyer or give you free legal services if you qualify. There are also lawyers who do not charge unless you win your appeal. Your local Social Security office has a list of groups that can help you with your appeal.

If you get someone to help you, you should let us know. If you hire someone, we must approve the fee before he or she can collect it.

How To Pay Us Back

There are two ways you can pay us back.

- As we said earlier, we plan to hold back money from her SSI check. We'll hold back $47.68 each month starting with October 1996 until she has paid us back. This is not more than 10 percent of her total income. Ten percent is

SSA-L8170
536-78-1326
07/04/96

- the most we can hold back without your consent. Contact us if you want a different amount held back.

- Another way to pay us back is to send us a check or money order for the full amount of her overpayment of $476.86. Paying us this way is **voluntary**. Make your check or money order out to the Social Security Administration. Be sure to put her Social Security number on it. Please use the enclosed envelope to mail the check or money order to us. Also, be sure to enclose the payment stub with your check or money order.

For Your Information

This information is also being sent to JENNIFER L. FILBECK.

If You Have Any Questions

If you have any questions, you may call us toll-free at 1-800-772-1213, or call your local Social Security office at 1-360-753-9095. We can answer most questions over the phone. You can also write or visit any Social Security office. The office that serves your area is located at:

DISTRICT OFFICE
SUITE 108
3700 MARTIN WAY EAST
OLYMPIA WA
98506

If you do call or visit an office, please have this letter with you. It will help us answer your questions. Also, if you plan to visit an office, you may call ahead to make an appointment. This will help us serve you more quickly when you arrive at the office.

SSA-L8170
536-78-1326
07/04/96

//s//
Janice L. Warden
Deputy Commissioner
For Operations

Enclosures:
A Detailed Explanation of Her Overpayment
Payment Stub
Refund Envelope

A Detailed Explanation Of Her Overpayment

Overpayment Summary

She was overpaid $476.86. The following table shows how her payment changed each month. The first column lists the month(s) we paid her incorrectly. The next column shows the amount we paid her for each month. The last column, "Correct Amount for Each Month," shows the amount we should have paid her for each month.

The SSI we paid her included some payments we made for her State. We show her total SSI below, and then the part of this money that is from her State.

Month	Amount We Paid Each Month	Correct Amount for Each Month
June 1996	$476.86 ($6.86 from Washington)	$.00

SSA-L8170

Why She Was Overpaid

For the month(s) listed below, her income on our records was wrong. Because we didn't know about all her income, we paid her too much SSI.

Under "Type of Income," we list only the income which we corrected on our records. Under the

column called "Amount We Used," we show the amount we used earlier to figure her payment. Under the column called "Correct Amount," we show the amount we should have used to figure her payment. Please check that column against her records. If the amount is wrong, the amount of her overpayment is wrong.

Month	Amount We Used	Correct Amount	Type of Income
June 1996	$.00	$2,186.00	Her Social Security Benefits

PAYMENT STUB

- Please cut along the dotted line. Return the bottom portion of the stub with your payment.
- Please use the enclosed envelope to mail your payment to us.
- Be sure to tell us if you've changed your address.
- Do not send cash or stamps.

Please Cut Along The Dotted Line

536781326000003291989 7 000047686 000000000

000047686 5052

JENNIFER L. FILBECK
Amount Due: $476.86

* Make your check or money order payable to:

SSA-L8170

Please show any change of address below.

Social Security Administration

* Print this on your check or money order:

_____

_____ 536-78-1326 DC

SSA-L8170

A-19 State of Washington Revenue Refund	Agency No.	Location Code
	3000	

AGENCY NAME
Department of Social & Health Services OAS/Trust Fund Unit PO Box 9501 Olympia, WA 98507-9501
CLAIMANT
JENNIFER STEVENS 1025 GLENWOOD WENATCHEE, WA 98801

Date	Description	Amount	Agency Use
	TO TRANSFER FUNDS FROM THE TRUST FUND ACCOUNT OFJENNIFER L. STEVENS (FILBECK), 011677.	$123.20	SSA

Prepared By	Tele. #	Date	Agency Approval	Date
//s// Todd Wollen			//s// KAREN KEGLEY-JUSTINEN	2/20/97

Dos. Date	Print Run Date	Current Doc. No.	Reference Doc. No.	Vendor Number	Vendor Message	UBI Number
2/18/97		TRU		VOD1		

Trans Code	Program Index	Source	Amount	Invoice
198	A0000	410000	$123.20	FILBECK

Account Approval For Payment	Date	Warrant Total	Warrant Number
		$123.20	

Social Security Administration
SUPPLEMENTAL SECURITY INCOME
Important Information

Date: January 28, 1997
Claim: 536-78-1326 DC

924
SECY DSHS FOR
JENNIFER L STEVENS
BOX 9501
OLYMPIA WA 98507-9501

We are writing to tell you about changes in JENNIFER L. STEVENS' (Filbeck) Supplemental Security Income payments. The rest of this letter will tell you more about this change.

Our Decision About How We'll Pay JENNIFER L. STEVENS

After considering all the information available, we have decided that Supplemental Security Income payments for JENNIFER L. STEVENS will be paid directly to her.

If You Have Any Questions

If you have any questions, you may call us toll-free at 1-800-772-1213, or call your local Social Security office at 1-509-662-1376. We can answer most questions over the phone. You can also write or visit any Social Security office. The office that serves your area is located at:

SSA-L8165

DISTRICT OFFICE
ROOM G30
301 YAKIMA STREET
WENATCHEE WA 98801

If you do call or visit an office, please have this letter with you. It will help us answer your questions. Also, if you plan to visit an office, you may call ahead to make an appointment. This will help us serve you more quickly.

//s//
Janice L. Warden
Deputy Commissioner
for Operations

A-19	State of Washington Revenue Refund

Agency No.	Location Code
3000	

AGENCY NAME
Department of Social & Health Services OAS/Trust Fund Unit PO Box 9501 Olympia, WA 98507-9501
CLAIMANT
SOC SEC ADMIN, #536-78-1326 3700 MARTIN WAY, SUITE 108 OLYMPIA, WA 98506-5068

Date	Description	Amount	Agency Use
	TO RETURN THE 1/97 SSI PAYMENT FROM THE TRUST FUND ACCOUNT OF JENNIFER L. STEVENS (FILBECK), 011677.	$304.75	SSI

Prepared By	Tele. #	Date	Agency Approval	Date
//s// Todd Wollen			//s// KAREN KEGLEY-JUSTINEN	2/20/97

Dos. Date	Print Run Date	Current Doc. No.	Reference Doc. No.	Vendor Number	Vendor Message	UBI Number
2/18/97		TRU		VOD1		

Trans Code	Program Index	Source	Amount	Invoice
198	A0000	410000	$304.75	FILBECK

Account Approval For Payment	Date	Warrant Total	Warrant Number
		$304.75	

Social Security Administration
Retirement, Survivors and Disability Insurance
Important Information

Office of Disability and
International Operations
1500 Woodlawn Drive
Baltimore, Maryland 21241-0001
Claim Number: 535-58-8055HC1

DSHS FOR JENNIFER L.
STEVENS
PO BX 9501
OLYMPIA WA 98507-9501

We have decided that it would be best for JENNIFER L STEVENS to have his checks sent to another payee.

If You Saved Any Money

While you were JENNIFER L STEVENS' payee, you may have saved some money for him. If you have, you should return it to us unless you have already made other plans with us for handling it. The money you will need to return includes:

- Saved and invested benefits.
- Interest earned from these savings and investments.
- Money you have left over from any check we sent you.

- Any checks you might receive after the date of this letter.

535-58-8055HC1

How to Pay Us Back

To do this, you can write us a check or money order. Make it out to the Social Security Administration. Be sure to write "Conserved Funds for JENNIFER L STEVENS, 535-58-8055HC1" on that check or money order. Please mail it in the enclosed green envelope.

Enclosure(s):
Refund Envelope PC 5

If You Have Any Questions

If you have any questions, you may call us toll-free at 1-800-772-1213, or call your local Social Security office at 1-360-753-9095. We can answer most questions over the phone. You can also write or visit any Social Security office. The office that serves your area is located at:

DISTRICT OFFICE
SUITE 108
3700 MARTIN WAY EAST
OLYMPIA, WA 98506

If you do call or visit an office, please have this letter with you. It will help us answer your questions. Also, if you plan to visit an office, you may call ahead

to make an appointment. This will help us serve you more quickly when you arrive at the office.

//s//
W. Burnell Hurt
Director

A-19	State of Washington Revenue Refund

Agency No.	Location Code
3000	

AGENCY NAME
Department of Social & Health Services OAS/Trust Fund Unit PO Box 9501 Olympia, WA 98507-9501
CLAIMANT
SOC SEC ADMIN., 536-78-1326 402 YAUGER WAY SW OLYMPIA, WA 98502

Date	Description	Amount	Agency Use
	TO RETURN FUNDS FROM THE TRUST FUND ACCOUNT OF JENNIFER L. STEVENS (FILBECK), 011677. 2/97 - $305.55	$305.55	SSI

Prepared By	Tele. #	Date	Agency Approval	Date
//s// Todd Wollen			//s// KAREN KEGLEY-JUSTINEN	3/25/97

Dos. Date	Print Run Date	Current Doc. No.	Reference Doc. No.	Vendor Number	Vendor Message	UBI Number
3/21/97		TRU		VOD1	FILBECK	

Trans Code	Program Index	Source	Amount	Invoice
198	A0000	410000	$305.55	TRUSTEE

Account Approval For Payment	Date	Warrant Total	Warrant Number
		$305.55	

(17)

No. 01-1420

IN THE SUPREME COURT OF THE UNITED STATES

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, ET AL.,

Petitioners,

v.

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, GUARDIAN, AND OTHER PERSONS SIMILARLY SITUATED,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

JOINT APPENDIX – VOL. II OF II

CHRISTINE O. GREGOIRE
Attorney General

William Berggren Collins
Sr. Assistant Attorney General
Counsel of Record
1125 Washington Street SE
Olympia, WA 98504-0100
360-753-6245
Counsel for Petitioners

Teresa Wynn Roseborough
Counsel of Record
Sutherland Asbill & Brennan LLP
999 Peachtree Street NE
Atlanta, GA 30309-8000
404-853-8000
Counsel For Respondents

PETITION FOR WRIT OF CERTIORARI FILED MARCH 14, 2002
CERTIORARI GRANTED MAY 28, 2002

252 pp

TABLE OF JOINT APPENDIX

Page

Relevant Docket Entries....1

Order of the Supreme Court of the United States Granting Stay dated March 13, 2002 8

Class Action Complaint For Disgorgement Of Funds Wrongfully Collected And For Injunctive Relief....9

Answer 23

Amended Answer Of Department Of Social And Health Services 25

Declaration Of Fact In Support Of Plaintiff's Motion For Summary Judgment 27

Exhibit 1....37

Exhibit 7....39

Exhibit 9....43

Exhibit 12....47

Exhibit 15....50

Exhibit 20....56

Exhibit 21....65

Exhibit 24....77

Exhibit 26....86

Affidavit Of Richard J. Anderson (3/5/97)....94
Affidavit Of Richard J. Anderson (7/24/97)....98
Affidavit Of Richard J. Anderson (9/17/97)....102
First Amended Complaint....105
Affidavit Of Linda Gil....123
Affidavit Of Alan Rhoten....129
Affidavit Of Karen Kegley Justinen....135
Exhibit A....145
Exhibit B....149
Exhibit C....160
Exhibit D....161
Affidavit Of Tamara Erickson....189
Affidavit Of Robert Covington....207
50 Random Accounts
Blimka....215
Cotton....228
Filbeck....235
Smith....314
Tulowezke....323

Exhibit 1 (Response To Order To Produce 2)....392
Blimka....392
Cotton....395
Tulowezke....398
Smith....400
Exhibit 1 (Response To Order To Produce No. 9) re Document Production No. 9 T List Service Code Data....403
Dillon et al. v. State, Argument Of Counsel And Court's Ruling....472
Plaintiffs' Brief In Support Of Proposed Findings Re: Federal Benefits....509
Braam et al. v. State Injunction....548

The following opinions, decisions, judgments, and orders have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the printed Petition For Certiorari:

Order of the Supreme Court of Washington dated October 11, 2001 1

Order of the Supreme Court of Washington Denying Motion For Reconsideration dated Dec. 14, 2001 40

Order of the Washington Supreme Court on Remand dated Dec. 2, 1999 43

Court's Findings Of Fact On Order Of Remand From Supreme Court dated May 30, 2000 46

Okanogan County Superior Court Order Granting Plaintiff's Motion For Summary Judgment dated Jan. 15, 1999 112

Okanogan County Superior Court Memorandum Opinion dated Sept. 29, 1998 122

Okanogan County Superior Court Order Allowing Amendment Of Complaint dated Nov. 7, 1997 131

Okanogan County Superior Court Order Granting Amendment Of Order Certifying Class Action dated Nov. 7, 1997 133

Okanogan County Superior Court Order Certifying Case To Proceed As A Class Action, Defining The Class And Denying Defendants' Motion To Dismiss dated May 19, 1997 136

Order of Sandra Day O'Connor, Associate Justice of the Supreme Court of the United States, Granting Stay dated Jan. 29, 2002 142

50 RANDOM ACCOUNTS
SMITH, DENITA

SOCIAL SECURITY ACCOUNTING

Last Name	SMITH
First Name	DENITA
MI	L
SSN	[redacted]
DOB	5/27/80
Funding Source	SSI

Payments Received	$5,977.00
Interest Earned	$0.00
Payments Returned	610.00
Account Disbursements	$1,838.00
Foster Care Reimbursement	$3,529.00
Balance $0.00	

Wednesday, January 12, 2000

REPORT DATE: 04/08/98
PURGE DATE: 01/01/98
PAGE: 1

----- DEPARTMENT OF SOCIAL AND HEALTH SERVICES -----
----- OFFICE OF ACCOUNTING SERVICES -----
----- TRUST FUND SECTION -----
PURGE REPORT FOR THE CLIENT TRUST FUND TRANSACTIONS

CLIENT: SMITH, DENITA L.
PIC: SMITHDL052780A

DATE	DOCUMENT	NUMBER	TRANS	REV	DESCRIPTION	DEBIT	CREDIT	BALANCE
10/08/97	D.C.R.	201	01-00	2000	09/97	599.00	0.00	599.00 DB
11/05/97	D.C.R.	214	01-00	2000	10/97	599.00	0.00	1198.00 DB
11/14/97	J.V.	12825	01-01	2000	09/97	0.00	599.00	599.00 DB
12/08/97	D.C.R.	232	01-00	2000	11/97	599.00	0.00	1198.00 DB
12/15/97	J.V.	16225	01-01	2000	10/97	0.00	599.00	599.00 DB

BEST AVAILABLE COPY

REPORT DATE: 10/1698
PAGE: 1

----- DEPARTMENT OF SOCIAL AND HEALTH SERVICES -----
----- OFFICE OF ACCOUNTING SERVICES -----
----- TRUST FUND SECTION -----
CLIENT TRUST FUND TRANSACTIONS

CLIENT: SMITH, DENITA L
PERSON ID: 1350968
PIC: SMITHDL052780A

DATE	DOCUMENT	NUMBER	TRANS	REV	DESCRIPTION	DEBIT	CREDIT	BALANCE
01/01/98	D.C.R.	00000			BAL FWD	599.00	0.00	599.00 DB
01/07/98	D.C.R.	250	01-00	2000	12/97	612.00	0.00	1211.00 DB
01/15/98	J.V.	19085	01-01	2000	11/97	0.00	599.00	612.00 DB
02/05/98	D.C.R.	265	01-00	2000	01/98	612.00	0.00	1224.00 DB
02/13/98	J.V.	22535	01-01	2000	12/97	0.00	612.00	612.00 DB
02/27/98	INVOICE	98058	05332	5000	01/98	0.00	612.00	0.00 DB
02/27/98	INVOICE	98058	A5332	5000	02/98	0.00	612.00	612.00 CR
03/06/98	D.C.R.	281	01-00	2000	02/98	612.00	0.00	0.00
03/19/98	INVOICE	98078	C5509	5000	03/98	0.00	614.00	614.00 CR
04/08/98	D.C.R.	320	01-00	2000	03/98	612.00	0.00	2.00 CR
05/04/98	D.C.R.	326	01-00	2000	04/98	612.00	0.00	610.00 DB
08/03/98	J.V.	04895	01-01	2000	01/98	0.00	367.98	242.02 DB
08/03/98	J.V.	04895	01-02	2000	02/98	0.00	242.02	0.00 CR

316

REPORT DATE: 01/13/00
PAGE: 1

----- DEPARTMENT OF SOCIAL AND HEALTH SERVICES -----
----- OFFICE OF ACCOUNTING SERVICES -----
----- TRUST FUND SECTION -----
CLIENT TRUST FUND TRANSACTIONS

CLIENT: SMITH, DENITA L
PIC: SMITHDL052780A

DATE	DOCUMENT	NUMBER	TRANS	REV	DESCRIPTION	DEBIT	CREDIT	BALANCE
03/15/99	D.C.R.	523	01-00	2000	01/97	164.00	0.00	164.00 DB
03/15/99	D.C.R.	523	01-00	2000	02/97	164.00	0.00	328.00 DB
03/15/99	D.C.R..	523	01-00	2000	03/97	164.00	0.00	492.00 DB
03/15/99	D.C.R.	523	01-00	2000	04/97	164.00	0.00	656.00 DB
03/15/99	D.C.R.	523	01-00	2000	05/97	130.00	0.00	786.00 DB
03/15/99	D.C.R.	523	01-00	2000	01/98	167.00	0.00	953.00 DB
03/15/99	D.C.R.	523	01-00	2000	02/98	167.00	0.00	1120.00 DB
04/02/99	J.V.	07538	01-01	2000	07/97	0.00	275.77	844.23 DB
04/02/99	J.V.	07538	01-02	2000	08/97	0.00	510.23	334.00 DB
04/02/99	J.V.	07538	01-03	2000	01/98	0.00	167.00	167.00 DB
04/02/99	J.V.	07538	01-04	2000	02/98	0.00	167.00	0.00
01/11/00	J.V.	01214	01-01	2000	01/98	367.98	0.00	367.98 DB
01/11/00	J.V.	01214	01-02	2000	02/98	242.02	0.00	610.00 DB
01/11/00	INVOICE	C5331	C5331	2000	ACCT BALANCE	0.00	610.00	0.00

317

A-19	State of Washington Revenue Refund

Agency No.	Location Code
3000	

AGENCY NAME
Department of Social & Health Services OAS/Trust Fund Unit PO Box 9501 Olympia, WA 98507-9501
CLAIMANT
RITA KLEMETSEN, FOR DENITA SMITH 1602 18TH AVE S, #306 SEATTLE, WA 98122

Date	Description	Amount	Agency Use
	TO TRANSFER FUNDS FROM THE TRUST FUND ACCOUNT OF DENITA L. SMITH, 052780, FOR RENT AND DAMAGE DEPOSIT. SSA PAYMENTS 12/97 ~~1/98~~ $612.00 1/98 ~~2/98~~ $612.00	$1,224.00	SSI

Prepared By	Tele. #	Date	Agency Approval	Date
//s// Todd Wollen		—	//s//KAREN KEGLEY-JUSTINEN	2/25/98

Dos. Date	Print Run Date	Current Doc. No.	Reference Doc. No.	Vendor Number	Vendor Message	UBI Number
2/24/98		TRU		VOD1	SMITH	

Trans Code	Program Index	Source	Amount	Invoice
198	001	410000	$1,224.00	TRUSTEE

Account Approval For Payment	Date	Warrant Total	Warrant Number
		$1,224.00	

Page: 1 Document Name: Servic-1

READMAI Read Mail For: WOTO300
YSMRVW SYSMRVWM

From : BAKG300 GAIL BAKER
Subject : Denita Smith 1350968 Date: 02/20/1998
Time: 10:04 AM

Copy : Forwarded: Y

Page: 1 Document Name: Servic-1

Mail From:

Press 'PF3' to Exit
Top<.+....1...+....2....+...3....+...4...+...5....+....6>

Todd—Please forward Jan-Feb-Mar benefits to mother per the below info. I agree to forego reimbursement for cost of care for Jan 1-6, 1998. Please remember to have check made out to mom FOR child. Please let me know when Jan-Feb $$ goes out. Thanks! Gail Baker Reg 4 Trust Fund Liaison

2/20/98

********** End of Attachment **********

Denita Smith is able to return home if her mother, Rita Klemetsen can obtain living quarters. Mother has enough money for 1st months rent and damage deposit but not enough for second month's rent and utilities deposit. The last paid foster care was 1/6/98 and the social worker doesn't plant to authorize any more payments on SSPS. The plan

is for Denita to go home 3/1/98. I am requesting that January and February's SSA checks of $599.00 each be sent to Denita's mom-

Rita Klemetsen
1602 – 18th Ave So. #306
Seattle, WA 98122
206-325-4892

Also it is too late for the March's check to be stopped and that too should be forwarded to the above address. Con't I am sending an addr change effective 3/1/98 to D.o. and a letter for mom to take to SSA for a payee change. Mom is aware that she will need to do a CDB claim for Denita when she turns 18

Denita Smith bd5/27/80
social worker is Indra Tuijillo

Thanks, Karen

ORIG. SENT TO : BAKG300
COPIES SENT TO: vaka300 trin300

****** Originated by: VAKA300 , KAREN FOMIN *****

State of Washington Revenue Refund

Agency No.	Location Code
3000	

AGENCY NAME
Department of Social & Health Services OAS/Trust Fund Unit PO Box 9501 Olympia, WA 98507-9501
CLAIMANT
RITA KEMETSEN, FOR DENITA SMITH 1602 18TH AVE S, #306 SEATTLE, WA 98122

Date	Description	Amount	Agency Use
	TO TRANSFER FUNDS FROM THE TRUST FUND ACCOUNT OF DENITA L. SMITH, 052780, FOR RENT AND DAMAGE DEPOSIT.	$614.00	5000

Prepared By	Tele. #	Date	Agency Approval	Date
//s// Todd Wollen			//s//KAREN KEGLEY-JUSTINEN	3/18/98

Dos. Date	Print Run Date	Current Doc. No.	Reference Doc. No.	Vendor Number	Vendor Message	UBI Number
3/18/98		TRU		VOD1	SMITH	

Trans Code	Program Index	Source	Amount	Invoice
198	A0000	410000	$614.00	TRUSTEE

Account Approval For Payment	Date	Warrant Total	Warrant Number
		$614.00	

Page: 1 Document Name: Servic-1

READMAIL Read Mail For: WOTO300
SMRVW SYSMRVWM

From : WOTO300 TODD WOLLEN
Subject : DENITA SMITH 1350968 Date: 03/18/1998
Time: 01:29 PM

Copy : Y Forwarded:

Page: 1 Document Name: Servic-1

Mail From:

Press 'PF3' to Exit
Top<.+....1...+....2....+...3....+...4...+...5....+....6>

Gail, This is to let you know that I have forwarded the Jan-Feb-Mar payments (for months 12/97, 1/98, 2/98). The payments were for $614.00 per month. A disbursement was done in Feb '98 for the amount of 1224.00 which Ms. Klemetsen should have received. Ms. Klemetsen should receive the Mar payment for 2/98 within 5 working days. These payments were sent out to assist in the transition of the child back home. We will take no further action unless instructed by you. . . Thanks, Todd

* * * END OF NOTE * * *
ORIG. SENT TO : BAKG300
COPIES SENT TO: VAKA300 TRIN300
WOTO300

Date: 3/18/98 Time: 01:52:58 PM

50 RANDOM ACCOUNTS
TULOWETZKE, AMANDA

SOCIAL SECURITY ACCOUNTING

Last Name	TULOWEZKE
First Name	AMANDA
MI	
SSN	[redacted]
DOB	10/19/82
Funding Source	SSI

Payments Received	$30,262.74
Interest Earned	$526.45
Payments Returned	$0.00
Account Disbursements	$11,300.26
Foster Care Reimbursement	$19,488.93
Balance	$0.00

Wednesday, January 05, 2000

REPORT DATE: 01/10/96
PURGE DATE: 11/01/96
PAGE: 1

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION
PURGE REPORT FOR THE CLIENT TRUST FUND TRANSACTIONS

CLIENT: TULOWETZKE, AMANDA
PIC: TULOWA 101982A

DATE	DOCUMENT	NUMBER	TRANS	REV	DESCRIPTION	DEBIT	CREDIT	BALANCE
06/05/95	D.C.R.	50541	05-00	2000		674.00	0.00	674.00 DB
07/07/95	D.C.R.	50823	04-00	2000		674.00	0.00	1348.00 DB
08/08/95	D.C.R.	51118	03-00	2000		674.00	0.00	2022.00 DB
08/18/95	J.V.	00287	03-00	2000	5\95 FC	0.00	425.09	1596.91 DB
08/25/95	J.V.	00308	03-00	2000	JUNE 95 FC	0.00	425.09	1171.82 DB
09/07/95	D.C.R.	51381	01-01	2000		674.00	0.00	1845.82 DB
09/29/95	J.V.	00720	01-01	2000	07-95 FC	0.00	433.59	1412.23 DB
10/04/95	D.C.R	51657	01-01	2000		674.00	0.00	2086.23 DB
10/10/95	J.V.	00958	01-01	2000	07-95 FC	0.00	200.00	1886.23 DB
10/19/95	J.V.	00989	01-01	2000	08-95 FC	0.00	433.59	1452.64 DB

REPORT DATE: 10/09/96
PURGE DATE: 07/01/96
PAGE: 1

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION
PURGE REPORT FOR THE CLIENT TRUST FUND TRANSACTIONS

CLIENT: TULOWETZKE, AMANDA
PIC: TULOWA 10198[illegible]A

DATE	DOCUMENT	NUMBER	TRANS	REV	DESCRIPTION	DEBIT	CREDIT	BALANCE
11/01/95	D.C.R	00000			BAL FWD	1452.64	0.00	1452.64 DB
11/06/95	J.V.	01350	01-01	2000	08-95 FC	0.00	290.42	1162.22 DB
11/06/95	D.C.R.	51933	01-01	2000		674.00	0.00	1836.22 DB
11/13/95	J.V.	01354	01-01	2000	09-95 FC	0.00	433.59	1402.63 DB
11/27/95	INVOICE	C7682	C7682	8000	TC SAVINGS	0.00	900.00	502.63 DB
12/07/95	D.C.R.	52197	01-01	2000		674.00	0.00	1176.63 DB
12/15/95	J.V.	01668	01-01	2000	10-95 FC	0.00	463.59	713.04 DB
01/04/96	D.C.R	52426	01-01	2000		691.00	0.00	1404.04 DB

01/16/96	J.V.	01956	01-01	2000	11-95 FC	0.00	433.59	970.45	DB	
02/06/96	D.C.R.	52718	01-01	2000		691.00	0.00	1661.45	DB	
02/16/96	J.V.	02378	01-01	2000	12-95 FC	0.00	433.59	1227.86	DB	
02/27/97	INVOICE	C3285	C3285	7000	TO SAVINGS	0.00	760.00	467.86	DB	
03/06/97	D.C.R.	52966	01-01	2000		691.00	0.00	1158.86	DB	
03/15/96	J.V.	02797	01-01	2000	01-96 FC	0.00	476.34	682.52	DB	
04/08/96	D.C.R	53268	01-01	2000		691.00	0.00	1373.52	DB	
04/15/96	J.V.	03091	01-01	2000	02-96 FC	0.00	413.25	960.27	DB	
05/07/96	D.C.R.	53543	01-01	2000		691.00	0.00	1651.27	DB	
05/15/96	J.V.	03358	01-01	2000	03-96 FC	0.00	453.21	1198.06	DB	
06/06/96	D.C.R.	53809	01-01	2000		691.00	0.00	1889.06	DB	
06/14/96	J.V.	03716	01-01	2000	04-96 FC	0.00	627.56	1261.50	DB	
06/17/96	INVOICE	C2196	C2196	2000		0.00	100.00	1161.50	DB	

REPORT DATE: 04/08/98
PURGE DATE: 01/01/98
PAGE: 1

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION
PURGE REPORT FOR THE CLIENT TRUST FUND TRANSACTIONS

CLIENT: TULOWETZKE, AMANDA
PIC: TULOWA 101982A

DATE	DOCUMENT	NUMBER	TRANS	REV	DESCRIPTION	DEBIT	CREDIT	BALANCE	
07/01/96	D.C.R	00000			BAL FWD	1161.50	0.00	1161.50	DB
07/05/96	D.C.R.	54074	01-01	2000		691.00	0.00	1852.50	DB
07/15/96	J.V.	04072	01-01	2000	05-96 FC	0.00	572.66	1279.84	DB
07/30/96	INVOICE	G8471	G8471	7000	TO SAVINGS	0.00	450.00	829.84	DB
08/08/96	D.C.R.	54381	05-00	2000		691.00	0.00	1520.84	DB
08/15/96	J.V.	04637	02-00	2000	6-96 FC	0.00	807.76	713.08	DB
08/16/96	INVOICE	96229	G8768	2000		0.00	300.00	413.08	DB
09/09/96	D.C.R.	54647	06-00	2000		691.00	0.00	1104.08	DB

09/13/96	J.V.	05407	02-00	2000	7-96 FC	0.00	584.11	519.97	DB	
10/07/96	D.C.R.	54903	11-00	2000		691.00	0.00	1210.97	DB	
10/14/96	J.V.	05482	02-00	2000	8-96 FC	0.00	584.11	626.86	DB	
11/05/96	D.C.R.	3	01-00	2000	10/96	691.00	0.00	1317.86	DB	
11/15/96	J.V.	05836	01-01	2000	9/96 FC	0.00	584.11	733.75	DB	
12/09/96	D.C.R.	21	01-00	2000	11/96	691.00	0.00	1424.75	DB	
12/13/96	J.V.	06212	02-00	2000	10-96 FC	0.00	584.11	840.64	DB	
01/07/97	D.C.R.	36	01-00	2000	12/96	711.00	0.00	1551.64	DB	
01/15/97	J.V.	06542	01-01	2000	NOV 96 FC	0.00	620.61	931.03	DB	
02/06/97	D.C.R.	56	01-00	2000	01/97	711.00	0.00	1642.03	DB	
02/10/97	J.V.	06934	02-00	2000	12-96 FC	0.00	584.11	1057.92	DB	
03/07/97	D.C.R	72	01-00	2000	02/97	711.00	0.00	1768.92	DB	
03/17/97	J.V.	07188	01-01	2000	1/97 FC	0.00	594.89	1174.03	DB	
03/27/97	INVOICE	G0342	G0342	7000	TO SAVINGS	0.00	1170.00	4.03	DB	
04/04/97	D.C.R.	93	01-00	2000	03/97	711.00	0.00	715.03	DB	
05/14/97	D.C.R.	114	01-00	2000	04/97	711.00	0.00	1426.03	DB	
05/14/97	J.V.	07879	01-01	2000	3/97 FC	0.00	441.92	984.11	DB	
05/19/97	INVOICE	97139	C6315	2000		0.000	250.00	734.11	DB	
06/02/97	J.V.	08299	01-01	2000	03/97	0.00	115.32	618.79	DB	

REPORT DATE: 04/08/98
PURGE DATE: 01/01/98
PAGE: 2

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION
PURGE REPORT FOR THE CLIENT TRUST FUND TRANSACTIONS

CLIENT: TULOWETZKE, AMANDA
PIC: TULOWA 101982A

DATE	DOCUMENT	NUMBER	TRANS	REV	DESCRIPTION	DEBIT	CREDIT	BALANCE	
06/06/97	D.C.R.	129	01-00	2000	05/97	-711.00	0.00	1329.79	DB
06/14/97	J.V.	08215	01-01	2000	04/97	0.00	584.96	744.83	DB
07/08/97	D.C.R.	146	01-00	2000	06/97	-711.00	0.00	1455.83	DB
07/15/97	J.V.	00056	01-01	2000	05/97	0.00	-775.16	680.67	DB
08/06/97	D.C.R.	166	01-00	2000	07/97	711.00	0.00	1391.67	DB
08/15/97	J.V.	10348	01-01	2000	06/97	0.00	-73.02	1318.65	DB
09/05/97	D.C.R.	183	01-00	2000	08/97	711.00	0.00	2029.65	DB
10/07/97	D.C.R.	200	01-00	2000	09/97	711.00	0.00	2740.65	DB

10/13/97	INVOICE	C1947	C1938	5000	/	0.00	200.00	2540.65	DB
11/05/97	D.C.R.	214	01-00	2000	10/97	711.00	0.00	3251.65	DB
11/14/97	INVOICE	C3447	C3448	2000	/	0.00	875.00	2376.65	DB
12/08/97	D.C.R.	232	01-00	2000	11-97	711.00	0.00	3087.65	DB
12/15/97	J.V.	16225	01-01	2000	10/97	0.00	322.98	2764.67	DB
12/26/97	INVOICE	97360	C5547	7000	TO SAVINGS	0.00	2200.00	564.67	DB
12/26/97	J.V.	X0644	01-01	7000	CORRECT ERROR	2200.00	0.00	2764.67	DB

REPORT DATE: 04/22/99
PAGE: 1

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION
CLIENT TRUST FUND TRANSACTIONS

CLIENT: TULOWETZKE, AMANDA
PERSON ID: 249771
PIC: TULOWA 101982A

DATE	DOCUMENT	NUMBER	TRANS	REV	DESCRIPTION	DEBIT	CREDIT	BALANCE	
01/01/98	D.C.R.	00000			BAL FWD	2764.67	0.00	2764.67	DB
01/07/98	D.C.R.	250	01-00	2000	12/97	726.00	0.00	3490.67	DB
01/15/98	J.V.	19085	01-01	2000	11/97	0.00	468.04	3022.63	DB
02/05/98	D.C.R.	265	01-00	2000	01/98	726.00	0.00	3748.63	DB
02/13/98	J.V.	22535	01-01	2000	12/97	0.00	468.04	3280.59	DB
02/25/98	INVOICE	98056	C8807	7000	/	0.00	2554.00	726.59	DB
02/27/98	D.C.R.	11111	01-01	7000	FROM SAVINGS	10.00	0.00	736.59	DB
03/05/98	D.C.R.	280	01-00	2000	02/98	726.00	0.00	1462.59	DB
03/13/98	J.V.	25655	01-01	2000	01/98	0.00	468.04	994.55	DB
04/09/98	D.C.R.	319	01-00	2000	03/98	726.00	0.000	1720.55	DB

04/15/98	J.V.	03015	01-01	2000	02/98	0.00	468.04	1252.51	DB
05/07/98	D.C.R.	325	01-00	2000	04/98	726.00	0.00	1978.51	DB
05/15/98	J.V.	03372	01-01	2000	03-98	0.00	561.37	1417.14	DB
06/08/98	D.C.R.	346	01-00	2000	05/98	726.00	0.00	2143.14	DB
06/15/98	J.V.	03832	01-01	2000	04/98	0.00	510.62	1632.52	DB
07/01/98	J.V.	04439	01-01	5000	04/98	8.74	0.00	1641.26	DB
07/08/98	D.C.R.	366	01-00	2000	06/98	726.00	0.00	2367.26	DB
07/15/98	J.V.	04375	01-01	2000	05/98	0.00	468.04	1899.22	DB
07/29/98	INVOICE	98210	6568J	7000		0.00	1000.00	899.22	DB
08/07/98	D.C.R.	388	01-00	2000	07/98	726.00	0.00	1625.22	DB
08/14/98	J.V.	04821	01-01	2000	06/98	0.00	468.04	1157.18	DB
08/17/98	INVOICE	98229	C7409	2000	/	0.00	377.50	779.68	DB
09/09/98	D.C.R.	406	01-00	2000	08/98	726.00	0.00	1505.68	DB
09/15/98	J.V.	05251	01-01	2000	07/98	0.00	480.54	1025.14	DB
09/29/98	INVOICE	98272	9875F	7000	TO SAVINGS	0.00	545.00	480.14	
10/07/98	D.C.R.	425	01-00	2000	09/98	726.00	0.00	1206.14	DB
10/15/98	J.V.	05705	01-01	2000	08/98	0.00	480.54	726.60	DB
11/06/98	D.C.R.	445	01-00	2000	10/98	726.00	0.00	1451.60	DB
11/13/98	J.V.	05922	01-01	2000	09/98	0.00	480.54	971.06	DB
12/09/98	D.C.R.	466	01-00	2000	11/98	726.00	0.00	1697.06	DB

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION
CLIENT TRUST FUND TRANSACTIONS

CLIENT: TULOWETZKE, AMANDA
PERSON ID: 249771
PIC: TULOWA 101982A

DATE	DOCUMENT	NUMBER	TRANS	REV	DESCRIPTION	DEBIT	CREDIT	BALANCE	
12/22/98	INVOICE	98356	C3989	2000	ACCT BALANCE	0.00	9197.76	7500.70	CR
01/15/99	J.V.	06585	01-01	2000	11/98	0.00	394.75	7895.45	CR
01/29/99	D.C.R.	494	01-00	7000	01/99	7895.45	0.00	0.00	

REPORT DATE: 10/30/96
PURGE DATE: 07/01/96
PAGE: 1

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION
PURGE REPORTCLIENT MONEY MARKET TRANSACTIONS

CLIENT: TULOWETZKE, AMANDA
PIC: TULOWA 101982A ACCOUNT: H

DATE	TRANSACTION	DESCRIPTION	DEBIT	CREDIT	BALANCE	
		BALANCE FORWARD			0.00	
11/30/95	INTEREST		0.09	0.00	0.09	DB
11/30/95	DEPOSIT	NEW ACCOUNT	900.00	0.00	900.09	DB
12/31/95	INTEREST		3.55	0.00	903.64	DB
01/31/96	INTEREST		3.14	0.00	906.78	DB
02/27/96	DEPOSIT	DEPOSIT	760.00	0.00	1666.78	DB
02/29/96	INTEREST		2.88	0.00	1669.66	DB
03/31/96	INTEREST		6.19	0.00	1675.85	DB
04/30/96	INTEREST		5.75	0.00	1681.60	DB
05/31/96	INTEREST		4.94	0.00	1686.54	DB
06/30/96	INTEREST		5.77	0.00	1692.31	DB

334

REPORT DATE: 08/02/96

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION

ANALYSIS OF MONEY INTEREST BY ACCOUNTY BY CLIENT FOR 07/96

ACCOUNT	CLIENT ID	MANUAL INTEREST	CALCULATED INTEREST	POSTED INTEREST	MESSAGES
******	**********	*******	*********	******	
H	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	

335

******	**********	*******	*********	******	
******	**********	*******	*********	******	
H	TULWA 101982A	0.00	6.03 DB	6.04 DB	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	Calculated/Manual Interest Not Equal
******	**********	*******	*********	******	
******	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	

REPORT DATE: 09/04/96

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION

ANALYSIS OF MONEY INTEREST BY ACCOUNTY BY CLIENT FOR 08/96

ACCOUNT	CLIENT ID	MANUAL INTEREST	CALCULATED INTEREST	POSTED INTEREST	MESSAGES
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	
******	**********	*******	*********	******	

******	**********	*******	*********	******
H	TULWA 101982A	0.00	7.61 DB	7.61 DB
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******

REPORT DATE: 10/08/96

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION

ANALYSIS OF MONEY INTEREST BY ACCOUNTY BY CLIENT FOR 09/96

ACCOUNT	CLIENT ID	MANUAL INTEREST	CALCULATED INTEREST	POSTED INTEREST	MESSAGES
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	Calculated/Manual Interest Not Equal
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	

H	**********	*******	*********	******	
H	**********	*******	*********	******	Calculated/Manual Interest Not Equal
H	TULWA 101982A	0.00	7.33 DB	7.32 DB	
H	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	

REPORT DATE: 11/07/96

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION

ANALYSIS OF MONEY INTEREST BY ACCOUNTY BY CLIENT FOR 10/96

ACCOUNT	CLIENT ID	MANUAL INTEREST	CALCULATED INTEREST	POSTED INTEREST	MESSAGES
H	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	Calculated/Manual Interest Not Equal
H	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	

H	**********	*******	*********	******
H	**********	*******	*********	******
H	TULWA 101982A	0.00	7.63 DB	7.63 DB
H	**********	*******	*********	******
H	**********	*******	*********	******
H	**********	*******	*********	******
H	**********	*******	*********	******
H	**********	*******	*********	******
H	**********	*******	*********	******
H	**********	*******	*********	******
H	**********	*******	*********	******
H	**********	*******	*********	******

REPORT DATE: 12/04/96

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION

ANALYSIS OF MONEY INTEREST BY ACCOUNTY BY CLIENT FOR 11/96

ACCOUNT	CLIENT ID	MANUAL INTEREST	CALCULATED INTEREST	POSTED INTEREST	MESSAGES
******	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
H	**********	*******	*********	******	
******	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	

H	TULWA 101982A	0.00	7.42 DB	7.42 DB
H	**********	*******	**********	******
H	**********	*******	**********	******
H	**********	*******	**********	******
H	**********	*******	**********	******
H	**********	*******	**********	******
******	**********	*******	**********	******
******	**********	*******	**********	******
******	**********	*******	**********	******
H	**********	*******	**********	******
******	**********	*******	**********	******
******	**********	*******	**********	******

REPORT DATE: 01/06/97

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION

ANALYSIS OF MONEY INTEREST BY ACCOUNTY BY CLIENT FOR 12/96

ACCOUNT	CLIENT ID	MANUAL INTEREST	CALCULATED INTEREST	POSTED INTEREST	MESSAGES
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	Calculated/Manual Interest Not Equal
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
H	TULWA 101982A	0.00	7.25 DB	7.19 DB	

******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	
******	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	
******	**********	*******	*********	******	Calculated/Manual Interest Not Equal

REPORT DATE: 02/04/97

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION

ANALYSIS OF MONEY INTEREST BY ACCOUNTY BY CLIENT

ACCOUNT	CLIENT ID	MANUAL INTEREST	CALCULATED INTEREST	POSTED INTEREST	MESS
H	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	
H	TULWA 101982A	0.00	6.40 DB	6.38 DB	
H	**********	*******	*********	******	
H	**********	*******	*********	******	

H	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	
H	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	
H	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	
H	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	
H	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	
H	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	
H	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	
H	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	
H	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	
H	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	
H	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	

REPORT DATE: 03/17/97

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION

ANALYSIS OF MONEY INTEREST BY ACCOUNTY BY CLIENT

ACCOUNT	CLIENT ID	MANUAL INTEREST	CALCULATED INTEREST	POSTED INTEREST	MESS
xxxxxx	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	
xxxxxx	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	
xxxxxx	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	
xxxxxx	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	
xxxxxx	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	
xxxxxx	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	
xxxxxx	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	
xxxxxx	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	
H	TULWA 101982A	0.00	5.83 DB	5.83 DB	
xxxxxx	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	
xxxxxx	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	
xxxxxx	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	

******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******

REPORT DATE: 04/03/97

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION

ANALYSIS OF MONEY INTEREST BY ACCOUNTY BY CLIENT

ACCOUNT	CLIENT ID	MANUAL INTEREST	CALCULATED INTEREST	POSTED INTEREST	MESS
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
H	TULWA 101982A	0.00	8.00 DB	7.99 DB	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	

******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	C
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	CALC

REPORT DATE: 05/05/97

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION

ANALYSIS OF MONEY INTEREST BY ACCOUNTY BY CLIENT

ACCOUNT	CLIENT ID	MANUAL INTEREST	CALCULATED INTEREST	POSTED INTEREST	MESS
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
H	**********	*******	*********	******	
H	**********	*******	*********	******	
******	**********	*******	*********	******	
H	**********	*******	*********	******	
******	**********	*******	*********	******	
H	TULWA 101982A	0.00	11.95 DB	11.97 DB	
H	**********	*******	*********	******	
******	**********	*******	*********	******	
H	**********	*******	*********	******	

H	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	
xxxxxx	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	
xxxxxx	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	
H	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	
xxxxxx	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	
H	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	CALC
xxxxxx	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	CALC
H	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	
xxxxxx	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	
xxxxxx	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	
xxxxxx	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	
xxxxxx	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	

REPORT DATE: 06/09/97

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION

ANALYSIS OF MONEY INTEREST BY ACCOUNTY BY CLIENT

ACCOUNT	CLIENT ID	MANUAL INTEREST	CALCULATED INTEREST	POSTED INTEREST	MESS
xxxxxx	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	
xxxxxx	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	
xxxxxx	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	
xxxxxx	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	CAL
xxxxxx	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	
xxxxxx	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	
xxxxxx	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	
xxxxxx	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	
H	TULWA 101982A	0.00	11.54 DB	11.55 DB	
xxxxxx	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	
xxxxxx	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	
xxxxxx	xxxxxxxxxxxx	xxxxxxx	xxxxxxxxx	xxxxxx	

******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	

REPORT DATE: 07/03/97

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION

ANALYSIS OF MONEY INTEREST BY ACCOUNTY BY CLIENT

ACCOUNT	CLIENT ID	MANUAL INTEREST	CALCULATED INTEREST	POSTED INTEREST	MESS
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	CALC
******	**********	*******	*********	******	
H	TULWA 101982A	0.00	9.62 DB	9.60 DB	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	

******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	CALC
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	

REPORT DATE: 08/04/97

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION

ANALYSIS OF MONEY INTEREST BY ACCOUNTY BY CLIENT

ACCOUNT	CLIENT ID	MANUAL INTEREST	CALCULATED INTEREST	POSTED INTEREST	MESS
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	CALC
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
H	**********	*******	*********	******	
H	TULWA 101982A	0.00	11.68 DB	11.66 DB	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	

******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	CALC
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	

REPORT DATE: 09/10/97

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION

ANALYSIS OF MONEY INTEREST BY ACCOUNTY BY CLIENT

ACCOUNT	CLIENT ID	MANUAL INTEREST	CALCULATED INTEREST	POSTED INTEREST	MESS
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
H	TULWA 101982A	0.00	10.26 DB	10.26 DB	
H	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
H	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	

******	**********	*******	*********	******
******	**********	*******	*********	******
H	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
H	**********	*******	*********	******
H	**********	*******	*********	******
H	**********	*******	*********	******
H	**********	*******	*********	******
H	**********	*******	*********	******
H	**********	*******	*********	******

REPORT DATE: 08/97

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION

ANALYSIS OF MONEY INTEREST BY ACCOUNTY BY CLIENT

ACCOUNT	CLIENT ID	MANUAL INTEREST	CALCULATED INTEREST	POSTED INTEREST	MESS
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
H	TULWA 101982A	0.00	11.76 DB	11.76 DB	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	

******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******

REPORT DATE: 10/30/97

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION

ANALYSIS OF MONEY INTEREST BY ACCOUNTY BY CLIENT

ACCOUNT	CLIENT ID	MANUAL INTEREST	CALCULATED INTEREST	POSTED INTEREST	MESS
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
H	TULWA 101982A	0.00	12.21 DB	12.22 DB	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	

******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******

REPORT DATE: 12/03/97

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION

ANALYSIS OF MONEY INTEREST BY ACCOUNTY BY CLIENT

ACCOUNT	CLIENT ID	MANUAL INTEREST	CALCULATED INTEREST	POSTED INTEREST	MESS
******	**********	*******	*********	******	
******	**********	*******	*********	******	
H	TULWA 101982A	0.00	11.85 DB	11.85 DB	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	

******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******
******	**********	*******	*********	******

REPORT DATE: 01/07/98

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF ACCOUNTING SERVICES
TRUST FUND SECTION

ANALYSIS OF MONEY INTEREST BY ACCOUNTY BY CLIENT

ACCOUNT	CLIENT ID	MANUAL INTEREST	CALCULATED INTEREST	POSTED INTEREST	MESS
******	**********	*******	*********	******	
******	**********	*******	*********	******	
H	TULWA 101982A	0.00	12.30 DB	12.29 DB	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	
******	**********	*******	*********	******	

XXXXXX	XXXXXXXXXXX	XXXXXXX	XXXXXXXXX	XXXXXX
XXXXXX	XXXXXXXXXXX	XXXXXXX	XXXXXXXXX	XXXXXX
XXXXXX	XXXXXXXXXXX	XXXXXXX	XXXXXXXXX	XXXXXX
XXXXXX	XXXXXXXXXXX	XXXXXXX	XXXXXXXXX	XXXXXX
XXXXXX	XXXXXXXXXXX	XXXXXXX	XXXXXXXXX	XXXXXX
XXXXXX	XXXXXXXXXXX	XXXXXXX	XXXXXXXXX	XXXXXX
XXXXXX	XXXXXXXXXXX	XXXXXXX	XXXXXXXXX	XXXXXX
XXXXXX	XXXXXXXXXXX	XXXXXXX	XXXXXXXXX	XXXXXX
XXXXXX	XXXXXXXXXXX	XXXXXXX	XXXXXXXXX	XXXXXX
XXXXXX	XXXXXXXXXXX	XXXXXXX	XXXXXXXXX	XXXXXX
XXXXXX	XXXXXXXXXXX	XXXXXXX	XXXXXXXXX	XXXXXX
XXXXXX	XXXXXXXXXXX	XXXXXXX	XXXXXXXXX	XXXXXX

SUBSIDIARY MONEY MARKET ACCOUNT

NAME: TULOWETZKE, AMANDA BIRTHDAY: 10/19/82 CASE NO: 37-D-153252-2
SSNO: 574-68-5379 ACCTNO: TULOWA 101982A PERSON ID: 249771

DATE	ACCT	TYPE	DESCRIPTION	DEBIT	CREDIT	BALANCE
01/31/98	T	C		12.33	0.00	3491.21
02/27/98	T	W	WITHDRAWAL	0.00	10.00	3481.21
02/27/98	T	D	DEPOSIT	2554.00	0.00	6035.21
02/28/98	T	C		11.64	0.00	6046.85
03/31/98	T	C		21.43	0.00	6068.28
04/30/98	T	C		20.85	0.00	6089.13
05/31/98	T	C		21.75	0.00	6110.88
06/30/98	T	C		20.98	0.00	6131.86
07/30/98	T	D	DEPOSIT	1000.00	0.00	7131.86
07/31/98	T	C		31.71	0.00	7163.57
08/31/98	T	C		37.81	0.00	7201.38
09/30/98	T	D	DEPOSIT	545.00	0.00	7746.38

ENTER OPTION (N=NEXT, P=PRIOR, T=TOP, B=BOTTOM, Q=QUIT)

SUBSIDIARY MONEY MARKET ACCOUNT

NAME: TULOWETZKE, AMANDA
SSNO: 574-68-5379

BIRTHDAY: 10/19/82
ACCTNO: TULOWA 101982A

CASE NO: 37-D-153252-2
PERSON ID: 249771

DATE	ACCT	TYPE	DESCRIPTION	DEBIT	CREDIT	BALANCE
09/30/98	T	C		36.87	0.00	7783.25
10/31/98	T	C		41.13	0.00	7824.38
11/30/98	T	C		39.78	0.00	7864.16
12/31/98	T	C		20.04	0.00	7884.20
01/25/99	T	I	CLOSING INT	11.25	0.00	7895.45
01/26/99	T	W	CLOSE ACCOUNT	0.00	7895.45	0.00
01/31/99	T	C		0.00	0.00	0.00

END

ENTER OPTION (N=NEXT, P=PRIOR, T=TOP, B=BOTTOM, Q=QUIT)

A-19 State of Washington Revenue Refund	Agency No. 3000	Location Code

AGENCY NAME
Department of Social & Health Services OAS/Trust Fund Unit PO Box 9501 Olympia, WA 98507-9501
CLAIMANT
CHARLES SCOTT, FOR AMANDA TULOWETSKE 2905 EVERGREEN AVE. BELLINGHAM, WA 98226

Date	Description	Amount	Agency Use
	TO TRANSFER FUNDS FROM THE TRUST FUND ACCOUNT OF AMANDA TULOWETSKE, 101982 FOR CLOTHING	$100.00	SSA

Prepared By	Tele. #	Date	Agency Approval	Date
//s// Todd Wollen			'/s/KAREN KEGLE r JUSTINEN	6/11/96

Dos. Date	Print Run Date	Current Doc. No.	Reference Doc. No.	Vendor Number	Vendor Message	UBI Number
6/12/96				VOD1		

Trans Code	Program Index	Source	Amount	Invoice
198	A0000	410000	$100.00	TulowetzkeT

Account Approval For Payment	Date	Warrant Total	Warrant Number
		$100.00	

READMAIL Read Mail For: WOTO300 SYSMRVW

From: KILI300 LINDA KIRKLAND
Subject: SSA FUNDS_37-D-153252-2
Date: 06/12/96
Time: 08:50 AM
Copy: Forwarded: Read: Reply:

I NEED TO REQUEST $100.00 FROM AMANDA TULOWETZSKI'S TRUST FUND FOR CLOTHING. PLEASE SEND A CHECK IN THE NAME OF THE FOSTER PARENT, CHARLES SCOTT, TO 2905 EVERGREEN AVE. BELLINGHAM, WA. 98226

END OF NOTE

Forwarded to ID:_____ Attachment: Y
Forward Acknowledgement: ___ (Y or Blank)
CMD: _____ _____

A-19 State of Washington Revenue Refund	Agency No.	Location Code
	3000	

AGENCY NAME
Department of Social & Health Services OAS/Trust Fund Unit PO Box 9501 Olympia, WA 98507-9501
CLAIMANT
ALBERT COX, FOR AMANDA TULOWETSKE 2905 EVERGREEN AVE. BELLINGHAM, WA 98226

Date	Description	Amount	Agency Use
	TO TRANSFER FUNDS FROM THE TRUST FUND ACCOUNT OF AMANDA TULOWETSKE, 101982 FOR CLOTHING	$300.00	SSA

Prepared By	Tele. #	Date	Agency Approval	Date
//s// Todd Wollen		–	//s//KAREN KEGLEY JUSTINEN	08/12/96

Dos. Date	Print Run Date	Current Doc. No.	Reference Doc. No.	Vendor Number	Vendor Message	UBI Number
8/7/96				VOD1		

Trans Code	Program Index	Source	Amount	Invoice
198	A0000	410000	$300.00	TulowetzkeT

Account Approval For Payment	Date	Warrant Total	Warrant Number
		$300.00	

READMAIL Read Mail For: WOTO300 SYSMRVW

From: KILI300 Linda Kirkland
Subject: SSA Funds__37-D-153252-2
Date: 08/07/96
Time: 01:38 PM
Copy: Forwarded: Read: Reply:

I AM REQUESTING $300.00 FROM AMANDA TULOWETZSKI'S TRUST FUND FOR SCHOOL CLOTHING. PLEASE SEND A CHECK TO ALBERTS COX 2905 EVERGREEN AVE. BELLINGHAM, WA. 98226. THANK YOU.

END OF NOTE

Forwarded to ID:_____ Attachment: Y
Forward Acknowledgement: ___ (Y or Blank)
CMD: _____ _____

A-19 State of Washington Revenue Refund	Agency No.	Location Code
	3000	

AGENCY NAME
Department of Social & Health Services OAS/Trust Fund Unit PO Box 9501 Olympia, WA 98507-9501
CLAIMANT
ANN AND STEVE PARKER, FOR AMANDA TULOWETSKE 7089 OLSEN RD. FERNDALE, WA 98248

Date	Description	Amount	Agency Use
	TO TRANSFER FUNDS FROM THE TRUST FUND ACCOUNT OF AMANDA TULOWETSKE, 101982 FOR CLOTHING	$250.00	SSA

Prepared By	Tele. #	Date	Agency Approval	Date
//s// Todd Wollen			//s//KAREN KEGLEY JUSTINEN	5/16/97

Dos. Date	Print Run Date	Current Doc. No.	Reference Doc. No.	Vendor Number	Vendor Message	UBI Number
5/13/97				VOD1		

Trans Code	Program Index	Source	Amount	Invoice
198	A0000	410000	$250.00	Trustee

Account Approval For Payment	Date	Warrant Total	Warrant Number
		$250.00	

Page: 1 Document Name: Servic~1

READMAIL Read Mail For: WOTO300 SYSMRVW

From: KEFK300 KAREN KEGLEY JUSTINEN
Subject: SSA FUNDS FOR AMANDA TULOWETZK
Date: 05/13/97
Time: 03:03 P
Copy: Forwarded: Y Read: Reply:

Page: 1 Document Name: Servic~1

Mail From:

PLEASE HANDLE. THANKS.

End of Attachment

AMANDA HAS OUTGROWN NEARLY ALL OF HER CLOTHES. SHE WILL NEED REPLACEMENT CLOTHES FOR THE REST OF THE SCHOOL YEAR, PLUS SUMMER SCHOOL. PLEASE SEND $250 FROM HER TRUST FUND TO COVER THESE ITEMS.

AMANDA TULOWETZKI 0 37 D 153252 2
FOSTER HOME: ANN AND STEVE PARKER
7089 OLSEN RD.
FERNDALE, WA 98248

END OF NOTE

Originated by: KILI300, LINDA KIRKLAND

Date: 5/13/97 Time: 03:31:40 PM

A-19 State of Washington Revenue Refund	Agency No.	Location Code
	3000	

AGENCY NAME
Department of Social & Health Services OAS/Trust Fund Unit PO Box 9501 Olympia, WA 98507-9501
CLAIMANT
GAYLE CARMICHAEL, FOR AMANDA TULOWETSKE 1720 ELLIS ST, SUITE 100 BELLINGHAM, WA 98225

Date	Description	Amount	Agency Use
	TO TRANSFER FUNDS FROM THE TRUST FUND ACCOUNT OF AMANDA TULOWETSKE, 101982 FOR CLOTHING	$200.00	SSA

Prepared By	Tele. #	Date	Agency Approval	Date
//s// TODD WOLLEN			//s// KAREN KEGLEY JUSTINEN	10/7/97

Dos. Date	Print Run Date	Current Doc. No.	Reference Doc. No.	Vendor Number	Vendor Message	UBI Number
10/7/97				VOD1	TULOWETZKE	

Trans Code	Program Index	Source	Amount	Invoice
198	A0000	410000	$200.00	Trustee

Account Approval For Payment	Date	Warrant Total	Warrant Number
		$200.00	

Page: 1 Document Name: Servic~1

READMAIL Read Mail For: WOTO300 SYSMRVW

From: KEFK300 KAREN KEGLEY JUSTINEN
Subject: Amanda Tulowetzki_37-D-153252-2
Date: 10/07/97
Time: 11:00 AM
Copy: Forwarded: Y Read: Reply:

Page: 1 Document Name: Servic~1

Mail From:

please handle. thanks.

End of Attachment

Karen, could you please send $200.00 from Amanda Tulowetke's Trust Fund for school clothes?

Foster Parent:
Gayle Carmichael
1720 Ellis St. Suite 100
Bellingham, WA. 98225
Thanks much!!

End of Note

Originated by: KILI300, LINDA KIRKLAND

Date: 10/7/97 Time: 11:10:25 AM

A-19 State of Washington Revenue Refund	Agency No.	Location Code
	3000	

AGENCY NAME
Department of Social & Health Services OAS/Trust Fund Unit PO Box 9501 Olympia, WA 98507-9501
CLAIMANT
GAIL CARMICHAEL, FOR AMANDA TULOWETZKE PO BOX 4819 BLANE, WA 98230

Date	Description	Amount	Agency Use
	TO FORWARD FUNDS FROM THE TRUST FUND ACCOUNT OF AMANDA TULOWETZKE, 101982, FOR 3 MONTHS OF ALTERNTIVE SCHOOL, ENROLLMENT AND SUPPLIES.	$875.00	2000

Prepared By	Tele. #	Date	Agency Approval	Date
//s//TODD WOLLEN			//s//KAREN KEGLEY-JUSTINEN	11/7/97

Dos. Date	Print Run Date	Current Doc. No.	Reference Doc. No.	Vendor Number	Vendor Message	UBI Number
11/6/97		TRU		VOD1	TULOWETZKE	

Trans Code	Program Index	Source	Amount	Invoice
198	A0000	410000	$875.00	TRUSTEE

Account Approval For Payment	Date	Warrant Total	Warrant Number
		$875.00	

READMAIL Read Mail For: KEGK300 SYSMRVW SYSMRWM

From: KILI300 LINDA KIRKLAND
Subject: TULOWETZKE Date: 11/05/1997
Time: 08:47 AM
Copy: Forwarded: Read: Y Reply:

Mail From

AMDNADAHAS ENTERED PLACEMENT AFTER BEING ON THE RUN FOR SEVERAL MONTHS – NO PAYMENT SINCE EARLY JUNE, 97. BLAINE HIGH SCHOOL WILL NOT ENROLL HER UNTIL NEXT SEMESTER (MID JANUARY). WE NEED TO ACCESS HER TRUST FUND FOR MONEY TO PAY FOR A PRIVATE ALTERNATIVE SCHOOL WHERE SHE CAN CATCH UP ON THIS SEMESTER.

COST:
$200.00/MO. / 3 OR $600.00
$200.00 FOR SUPPLIES
75.00 ENTRY FEETOTAL: $875.00

PLEASE SEND CHECK TO:
GAIL CARMICHAEL
P.O. BOX 4819
BLAINE, WA 98230

*** END OF NOTE ***

ORIG. SENT TO: KEGK300

A-19 State of Washington Revenue Refund

Agency No.	Location Code
3000	

AGENCY NAME
Department of Social & Health Services OAS/Trust Fund Unit PO Box 9501 Olympia, WA 98507-9501
CLAIMANT
MARIANNE DAVIDSON, for AMANDA TULOWETKE 865 ½ BLAINE AVE P.O. BOX 1554 BLAINE, WA 98231

Date	Description	Amount	Agency Use
	TO TRANSFER FUNDS FROM THE TRUST ACCOUNT OF AMANDA TULOWETZKE, 101982, FOR DENTAL WORK & CLOTHING.	$377.50	2000

Prepared By	Tele. #	Date	Agency Approval	Date
//s//SHERYL CHOATE			//s//SANDY SHOEMAKER	8/13/98

Dos. Date	Print Run Date	Current Doc. No.	Reference Doc. No.	Vendor Number	Vendor Message	UBI Number
8-13-98		TRU		VOD1	TULOWETZKE	

Trans Code	Program Index	Source	Amount	Invoice
198	A0000	410000	$377.50	TRUSTEE

Account Approval For Payment	Date	Warrant Total	Warrant Number
		$377.50	

AUG-12-98 WED 04:06 PM MTV
FAX NO. 3113923606640597

TELEFAX TRANSMITTAL COVER SHEET

DATE: 8-12-98
TO: Karen Kegley 360-902-8213
FROM: Linda Kirkland

THE INFORMATIN WE ARE SENDING HAS 2 PAGES PLUS THIS COVER SHEET.

IF YOU HAVE AN QUESTIONS CONCERNING THIS MATERIAL, PLEASE CONTACT:

E-MAIL KILI300 OR

BY TELEPHONING:
SCAN_____ OFF SCAN 360-647-6133

COMMENTS:

Karen, please see attached:

Also:

Amanda needs additional funds from her Trust Account for Amount of $250.00 for School clothes and supplies.

Please send a check for amount of $377.50 to Foster Parent:
Marianne Davidson
865 ½ Blaine Ave P.O. Box 1554
Blaine, WA 98231

AUG-12-98 WED 04:06 PM MTV
FAX NO. 3113923606640597

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
PO Box 45506 □ Olympia WA 98504-5506

June 8, 1998

Amanda M. Tulowetzke
865 ½ Blaine Avenue
Post Office Box 1554
Blaine, WA 98231

Case No: 37D01532522
PIC No: AM101982TULOW3

Dear Ms. Tulowetzke:

On May 29, 1998, Jim E. Brown asked us to approve a crown and prefab post & core on tooth #20.

This request has been approved with the exception of the following:

Based on state law, RCW 74.09.530, and under regulations, WAC 388-535-1100, we are denying the prefab post & core on tooth #20 because this dental procedure is a noncovered service by the Medical Assistance program.

AUG-12-98 WED 04:06 PM MTV
FAX NO. 3113923606640597

If you have additional medical information that would help justify your request, please feel free to send it to Medical Assistance Administration.

BEST AVAILABLE COPY

Division of Health Services and Quality Support,
P.O. Box 45506, Olympia, Washington 98504-5506.

Sincerely,
//s//
Sharon L. Morrison, Manager
Quality Utilization Section
Medical Assistance Administration

SLM:jt
cc: Jim E. Brown

AUG-12-98 WED 04:06 PM MTV
FAX NO. 3113923606640597

Chart

Patient: Amanda Tulowetzke Date: 05/19/1998
Birthdate: 10/19/1982 Chart #: TU0004 SS#:
Provider: Jim E. Brown
Phone: (360) 592-1100
Office: P O Box 621
Deming, WA 98244

1 2 3 4 5 6 7 8 9 10 11 12 13 15 16

STANDARD DENTAL DIAGRAM
[UNABLE TO REPRODUCE]

W
32 31 30 29 28 27 26 25 24 23 22 21 20 19 18 17

■ Treatment Plan ■ Completed ■ Conditions ■ Existing-This Prov
■ Existing-Other Prov

#20 post & core $127.50 not covered by D.S.H.S.

A-19 State of Washington Revenue Refund	Agency No.	Location Code
	3000	

AGENCY NAME
Department of Social & Health Services OAS/Trust Fund Unit PO Box 9501 Olympia, WA 98507-9501
CLAIMANT
TULOWETZKE, AMANDA P.O. BOX 1554 BLAINE, WA 98231

Date	Description	Amount	Agency Use
	TO TRANSFER FUNDS FROM THE TRUST FUND ACCOUNT OF AMANDA TULOWETZKE, 101982. Account Balance	$9,197.76	2000

Prepared By	Tele. #	Date	Agency Approval	Date
//s//SHERYL CHOATE			//s//KAREN KEGLEY-JUSTINEN	12/21/98

Dos. Date	Print Run Date	Current Doc. No.	Reference Doc. No.	Vendor Number	Vendor Message	UBI Number
12-21-98		TRU		VOD1	TULOWETZKE	

Trans Code	Program Index	Source	Amount	Invoice
198	A0000	410000	$9,197.76	TRUSTEE

Account Approval For Payment	Date	Warrant Total	Warrant Number
		$9,197.76	

DEC-18-98 FRI 03:54 PM MTV
FAX NO. 3113923606640597

TELEFAX TRANSMITTAL COVER SHEET

DATE: 12-18-98
TO: Trust Funds – SSA 360-902-8213
FROM: Linda Kirkland

THE INFORMATION WE ARE SENDING HAS 2 PAGES PLUS THIS COVER SHEET.

IF YOU HAVE AN QUESTIONS CONCERNING THIS MATERIAL, PLEASE CONTACT:

Re: Amanda Tulowetzke

BY TELEPHONING:

SCAN _____ OFF SCAN _____

COMMENTS:

Please see the attached Emancipation Order. Please release her trust fund money in form of check and send to her address at P.O. Box 1554

Blaine, WA 98231

Linda Kirkland SW3
DSHS/DCFS

DEC-18-98 FRI 03:54 PM MTV
FAX NO. 3113923606640597

SUPERIOR COURT OF WASHINGTON
COUNTY OF

In re the Emancipation of: AMANDA TULOWETZKE	No. 98-2-02313-5 DECREE OF EMANCIPATION (DCE)

I. BASIS

A hearing on a petition for emancipation has been held in this court.

II. FINDINGS

The court FINDS that the petition for emancipation should be granted and a decree entered because:

[x] The petitioner has provided the following facts by clear and convincing evidence:

(a) the petitioner is sixteen years of age or older;

(b) the petitioner is a resident of the state;

(c) the petitioner has the ability to manager his or her financial affairs; and

(d) the petitioner has the ability to manage his or her personal, social, educational, and nonfinancial affairs.

[ ] There is clear and convincing evidence that denial of the grant of emancipation would be detrimental to the interests of the minor. (To be

checked only if a parent, guardian, custodian, or the department, opposes the petition for emancipation.)

III. DECREE

3.1 The petition for emancipation is granted.

3.2 The petitioner shall obtain a Washington driver's license or a Washington identification card. The Department of Licensing shall make a notation of the emancipation status on the license or identification card.

3.3 The petitioner shall be considered to have the power and capacity of an adult, except as provided in paragraph 3.4 below. The petitioner shall be considered emancipated for the purpose of, but not limited to:

(a) The termination of parental obligations of financial support, care, supervision, and any other obligation the parent may have by virtue of the parent-child relationship, including obligation imposed because of marital dissolution;

(b) The right to sue or be sued in his or her own name;

(c) The right to retain his or her own earnings;

(d) The right to establish a separate residence or domicile;

(e) The right to enter into nonvoidable contracts;

(f) The right to act automatically, and with the power and capacity of an adult, in all business relationships, including but not limited to property transactions;

(g) The right to work, and earn a living, subject only to the health and safety regulations designed to protect those under age of majority regardless of their legal status; and

(h) The right to give informed consent for receiving health care services.

3.4 The petitioner shall not be considered an adult for:

(a) The purposes of the adult criminal laws of the state unless the decline of jurisdiction procedures contained in RCW 13.40.110 are used;

(b) the criminal laws of the state when the emancipation minor is a victim and the age of the victim is an element of the offense; or

(c) those specific constitutional and statutory age requirements regarding voting, use of alcoholic beverages, and other health and safety regulations relevant to the minor because of the minor's age.

3.5 Other:

Dated: December 18, 1998

//s//

_____

Judge
MICHAEL F. MOYNIHAN

Defendants' Exhibit I
Defendants' Response to Plaintiffs' Order to Produce #2

Monthly Reports on All Foster Care Payments
Whether or Not Reimbursed
1997-1999

Blimka, Nacole
Cotten, Jasmin
Smith, Denita
Tulowetzke, Amanda

Ac	V	Ofc	Worker	Srcv	Recipient	Beg date	End Date	Amt Auth	Amt Paid
	-	721	10VP25	3443	Blimka, Nacole	02/01/1997	02/28/1997	1696.00	1696.00
	-	721	10VP25	3217	Blimka, Nacole	03/01/ 1997	03/31/1997	50.00	50.00
	-	721	10VP25	3443	Blimka, Nacole	03/01/ 1997	03/31/1997	1696.00	1696.00
	-	721	10VP25	3433	Blimka, Nacole	03/30/1997	03/31/1997	90.83	90.83
	-	721	10VP25	3233	Blimka, Nacole	03/31/1997	04/02/1997	19.53	19.53
	-	721	10WS21	3217	Blimka, Nacole	04/01/1997	04/30/1997	450.00	450.00
	-	721	10WS21	3443	Blimka, Nacole	04/01/1997	04/30/1997	1696.00	1696.00
	-	721	10WS21	3217	Blimka, Nacole	05/01/1997	05/31/1997	250.00	250.00

	-	721	10WS21	3443	Blimka, Nacole	05/01/1997	05/31/1997	1696.00	1696.00
	-	721	10WS21	3217	Blimka, Nacole	06/01/1997	06/30/1997	475.00	475.00
	-	721	10WS21	3443	Blimka, Nacole	06/01/1997	06/30/1997	1696.00	1696.00
	-	721	10WS21	3217	Blimka, Nacole	07/01/1997	07/31/1997	475.00	475.00
	-	721	10WS21	3443	Blimka, Nacole	07/01/1997	07/31/1997	1747.00	1747.00
	-	721	10WS21	3217	Blimka, Nacole	08/01/1997	08/31/1997	178.06	178.06
	-	721	10WS21	3433	Blimka, Nacole	08/01/1997	08/31/1997	1747.00	1747.00
	-	721	10WS21	3217	Blimka, Nacole	09/01/1997	09/30/1997	100.00	100.00
	-	721	10WS21	3443	Blimka, Nacole	09/01/1997	09/30/1997	1747.00	1747.00
	-	721	10WS21	3443	Blimka, Nacole	10/01/1997	10/31/1997	1747.00	1747.00
	-	721	10WS21	3217	Blimka, Nacole	11/01/1997	11/30/1997	45.00	45.00
	-	721	10WS21	3443	Blimka, Nacole	11/01/1997	11/30/1997	1747.00	1747.00
	-	721	10WS21	3217	Blimka, Nacole	12/01/1997	12/31/1997	135.05	135.05
	-	721	10WS21	3443	Blimka, Nacole	12/01/1997	12/31/1997	1747.00	1747.00
	-	721	10WS21	3233	Blimka, Nacole	12/09/1997	12/31/1997	52.00	52.00
	-	721	10WS21	3443	Blimka, Nacole	01/01/1998	01/31/1998	1747.00	1747.00
	-	721	10WS21	3443	Blimka, Nacole	02/01/1998	02/08/1998	1747.00	459.36
	-	721	10WS21	3215	Blimka, Nacole	02/08/1998	02/28/1998	161.43	111.30
	-	721	10WS21	3235	Blimka, Nacole	02/08/1998	02/28/1998	80.00	240.00
	-	721	10WS21	3210	Blimka, Nacole	02/09/1998	02/28/1998	468.04	307.60
	-	721	10WS21	3212	Blimka, Nacole	02/09/1998	02/28/1998	146.11	96.00

-	721	10CK20	3219	Blimka, Nacole	02/20/1998	02/22/1998	24.00	44.33
-	721	10WS21	3210	Blimka, Nacole	03/01/1998	03/31/1998	468.04	468.04
-	721	10WS21	3212	Blimka, Nacole	03/01/1998	03/31/1998	146.11	146.11
-	721	10WS21	3215	Blimka, Nacole	03/01/1998	03/31/1998	161.43	161.43
-	721	10WS21	3235	Blimka, Nacole	03/01/1998	03/31/1998	80.00	320.00
-	721	10CK20	3219	Blimka, Nacole	03/20/1998	03/22/1998	24.00	44.33
-	721	10WS21	3210	Blimka, Nacole	04/01/1998	04/30/1998	468.04	468.04
-	721	10WS21	3212	Blimka, Nacole	04/01/1998	04/30/1998	146.11	146.11
-	721	10WS21	3215	Blimka, Nacole	04/01/1998	04/30/1998	161.43	161.43
-	721	10WS21	3235	Blimka, Nacole	04/01/1998	04/30/1998	80.00	320.00
-	721	10CK20	3219	Blimka, Nacole	04/03/1998	04/05/1998	24.00	44.33
-	721	10WS21	3210	Blimka, Nacole	05/01/1998	05/31/1998	468.04	468.04
-	721	10WS21	3212	Blimka, Nacole	05/01/1998	05/31/1998	146.11	146.11
-	721	10WS21	3215	Blimka, Nacole	05/01/1998	05/31/1998	161.43	161.43
-	721	10WS21	3235	Blimka, Nacole	05/01/1998	05/31/1998	80.00	240.00
-	721	10WS21	3234	Blimka, Nacole	05/13/1998	05/13/1998	425.00	425.00
-	721	10WS21	3225	Blimka, Nacole	05/28/1998	05/30/1998	197.78	197.78
-	721	10WS21	3219	Blimka, Nacole	05/29/1998	05/31/1998	24.00	44.33
-	721	10WS21	3210	Blimka, Nacole	06/01/1998	06/30/1998	468.04	468.04
-	721	10WS21	3212	Blimka, Nacole	06/01/1998	06/30/1998	146.11	146.11
-	721	10WS21	3215	Blimka, Nacole	06/01/1998	06/30/1998	161.43	161.43
-	721	10WS21	3235	Blimka, Nacole	06/01/1998	06/30/1998	80.00	240.00

-	721	10WS21	3233	Blimka, Nacole	07/01/1998	07/01/1998	75.00	75.00
-	721	10WS21	3210	Blimka, Nacole	07/01/1998	07/09/1998	480.54	142.11
-	721	10WS21	3212	Blimka, Nacole	07/01/1998	07/09/1998	146.11	43.20
-	721	10WS21	3215	Blimka, Nacole	07/01/1998	07/31/1998	161.43	161.43
-	721	10WS21	3215	Blimka, Nacole	08/01/1998	08/08/1998	37.10	9.68
-	721	10WS21	2510	Blimka, Nacole	12/11/1998	12/11/1998	399.83	399.83
Office:		721			Payment	Records:	57 Paid:	30,097.40
REGION:		0			Payment	Records:	57 Paid:	30,097.40

Ac	V	Ofc	Worker	Srcv	Recipient	Beg date	End Date	Amt Auth	Amt Paid
	-	741	04SG56	2833	Cotten, Jasmin	01/01/1997	01/31/1997	19.55	430.10
	-	741	04SG56	3210	Cotten, Jasmin	01/01/1997	01/31/1997	303.56	303.56
	-	741	04SG56	3212	Cotten, Jasmin	01/01/1997	01/31/1997	141.85	141.85
	-	741	04SG56	2833	Cotten, Jasmin	02/01/1997	02/28/1997	19.55	430.10
	-	741	04SG56	3210	Cotten, Jasmin	02/01/1997	02/28/1997	303.56	303.56
	-	741	04SG56	3212	Cotten, Jasmin	02/01/1997	02/28/1997	141.85	141.85
	-	741	04SG56	2833	Cotten, Jasmin	03/01/1997	03/31/1997	19.55	430.10
	-	741	04SG56	3210	Cotten, Jasmin	03/01/1997	03/31/1997	303.56	303.56
	-	741	04SG56	3212	Cotten, Jasmin	03/01/1997	03/31/1997	141.85	141.85
	-	741	04SG56	2804	Cotten, Jasmin	03/15/1997	03/31/1997	0.92	50.98
	-	741	04SG56	2804	Cotten, Jasmin	04/01/1997	04/30/1997	0.92	67.97

-	741	04SG56	3210	Cotten, Jasmin	04/01/1997	04/30/1997	303.56	303.56
-	741	04SG56	2833	Cotten, Jasmin	04/01/1997	04/30/1997	19.55	430.10
-	741	04SG56	2833	Cotten, Jasmin	05/01/1997	05/31/1997	19.55	430.10
-	741	04SG56	2804	Cotten, Jasmin	05/01/1997	05/31/1997	0.92	67.97
-	741	04SG56	3210	Cotten, Jasmin	05/01/1997	05/31/1997	303.56	303.56
-	741	04SG56	2804	Cotten, Jasmin	06/01/1997	06/30/1997	0.92	67.97
-	741	04SG56	2833	Cotten, Jasmin	06/01/1997	06/30/1997	19.55	430.10
-	741	04SG56	3210	Cotten, Jasmin	06/01/1997	06/60/1997	303.56	303.56
-	741	04SG56	2804	Cotten, Jasmin	07/01/1997	07/31/1997	0.92	67.97
-	741	04SG56	2833	Cotten, Jasmin	07/01/1997	07/31/1997	19.55	430 10
-	741	04SG56	3210	Cotten, Jasmin	07/01/1997	07/31/1997	325.17	325.17
-	741	04SG56	2833	Cotten, Jasmin	08/01/1997	08/31/1997	19.55	430.10
-	741	04SG56	2804	Cotten, Jasmin	08/01/1997	08/31/1997	0.92	67.97
-	741	04SG56	3210	Cotten, Jasmin	08/01/1997	08/31/1997	325.17	325.17
-	741	04SG56	2833	Cotten, Jasmin	09/01/1997	09/30/1997	19.55	430.10
-	741	04SG56	3210	Cotten, Jasmin	09/01/1997	09/30/1997	325.17	325.17
-	741	04SG56	2833	Cotten, Jasmin	10/01/1997	10/10/1997	19.55	195.50
-	741	04SG56	3210	Cotten, Jasmin	10/01/1997	10/31/1997	325.17	325.17
-	741	04SG56	2805	Cotten, Jasmin	10/16/1997	10/16/1997	16.36	16.36
-	741	04SG56	2808	Cotten, Jasmin	10/27/1997	10/27/1997	25.00	25.00

-	741	04SG56	2805	Cotten, Jasmin	10/27/1997	10/31/1997	16.36	81.80
-	741	04SG56	3210	Cotten, Jasmin	11/01/1997	11/30/1997	325.17	325.17
-	741	04SG56	3210	Cotten, Jasmin	12/01/1997	12/31/1997	325.17	325.17
		Office:	741		Payment Records: 34		Paid:	8,778.32

-	743	16KD10	2805	Cotten, Jasmin	11/01/1997	11/30/1997	16.36	359.92
-	743	16KD10	2805	Cotten, Jasmin	12/01/1997	12/31/1997	16.36	359.92
-	743	16KD10	3210	Cotten, Jasmin	01/01/1998	01/31/1998	325.17	325.17
-	743	16KD10	2805	Cotten, Jasmin	01/01/1998	01/31/1998	16.36	359.92
-	743	16KD10	3210	Cotten, Jasmin	02/01/1998	02/28/1998	325.17	325.17
-	743	16KD10	2805	Cotten, Jasmin	02/01/1998	02/28/1998	16.36	359.92
-	743	16KD10	3210	Cotten, Jasmin	03/01/1998	03/31/1998	325.17	325.17
-	743	16KD10	2805	Cotten, Jasmin	03/01/1998	03/31/1998	16.36	359.92
-	743	16KD10	2805	Cotten, Jasmin	04/01/1998	04/30/1998	17.00	374.00
-	743	16KD10	3210	Cotten, Jasmin	04/01/1998	04/30/1998	325.17	325.17
- +	743	16KD10	3210	Cotten, Jasmin	05/01/1998	05/31/1998	325.17	325.17
- +	743	16KD10	2805	Cotten, Jasmin	05/01/1998	05/31/1998	17.00	374.00
- +	743	16KD10	3210	Cotten, Jasmin	06/01/1998	06/30/1998	325.17	325.17
- +	743	16KD10	2805	Cotten, Jasmin	06/01/1998	06/30/1998	17.00	374.00
- +	743	16KD10	3210	Cotten, Jasmin	07/01/1998	07/31/1998	337.67	337.67

- +	743	16KD10	2805	Cotten, Jasmin	07/01/1998	07/31/1998	17.00	374.00
- +	743	16KD10	3210	Cotten, Jasmin	08/01/1998	08/31/1998	337.67	337.67
-	743	16KD10	2805	Cotten, Jasmin	08/01/1998	08/31/1998	17.00	374.00
-	743	16KD10	2805	Cotten, Jasmin	09/01/1998	09/06/1998	17.00	68.00
-	743	16KD10	3210	Cotten, Jasmin	09/01/1998	09/30/1998	337.67	337.67
-	743	16KD10	2805	Cotten, Jasmin	09/07/1998	09/07/1998	17.00	17.00
-	743	16KD10	2807	Cotten, Jasmin	09/08/1998	09/30/1998	10.83	184.11
Office: 743				Payment Records: 22		Paid: 6,902.74		
REGION: 0				Payment Records: 56		Paid: 15,681.06		

Ac	V	Ofc	Worker	Srcv	Recipient	Beg date	End Date	Amt Auth	Amt Paid
-		730	03AH08	3219	TULOWETKE, AM	05/23/1997	05/25/1997	24.34	44.96
-		730	03AH08	3219	TULOWETKE, AM	03/27/1998	03/31/1998	18.32	84.59
-		730	03AH08	3219	TULOWETKE, AM	04/01/1998	04/02/1998	18.32	33.84
Office: 730					Payment Record: 3			Paid:	163.39
-		733	31KL18	3210	TULOWETKE, AM	01/01/1997	01/10/1997	442.26	145.30
-		733	31KL18	3210	TULOWETKE, AM	01/01/1997	01/10/1997	141.85	46.60
-		733	31KL18	3210	TULOWETKE, AM	01/11/1997	01/31/1997	442.26	305.13
-		733	31KL18	3212	TULOWETKE, AM	01/11/1997	01/31/1997	141.85	97.86

-	733	31KL18	3210	TULOWETKE, AM	03/06/1997	03/06/1997	442.26	14.53
-	733	31KL18	3210	TULOWETKE, AM	03/07/1997	03/09/1997	442.26	43.59
-	733	31KL18	3210	TULOWETKE, AM	03/12/1997	03/31/1997	442.26	290.60
-	733	31KL18	3212	TULOWETKE, AM	03/12/1997	03/31/1997	141.85	93.20
-	733	31KL18	3233	TULOWETKE, AM	03/26/1997	03/26/1997	115.32	115.32
-	733	31KL18	3210	TULOWETKE, AM	04/01/1997	04/07/1997	442.26	101.71
-	733	31KL18	3212	TULOWETKE, AM	04/01/1997	04/07/1997	141.85	32.62
-	733	31KL18	3210	TULOWETKE, AM	04/08/1997	04/12/1997	442.26	72.65
-	733	31KL18	3210	TULOWETKE, AM	04/08/1997	04/08/1997	141.85	4.66
-	733	31KL18	3212	TULOWETKE, AM	04/12/1997	04/30/1997	141.85	88.54
-	733	31KL18	3210	TULOWETKE, AM	04/19/1997	04/20/1997	442.26	43.59
-	733	31KL18	3210	TULOWETKE, AM	04/19/1997	04/20/1997	141.85	13.98
-	733	31KL18	3212	TULOWETKE, AM	04/21/1997	04/30/1997	442.26	145.30
-	733	31KL18	3210	TULOWETKE, AM	04/21/1997	04/27/1997	24.34	24.34
-	733	31KL18	3210	TULOWETKE, AM	04/28/1997	04/30/1997	442.26	43.59
-	733	31KL18	3210	TULOWETKE, AM	04/28/1997	04/30/1997	141.85	13.98
-	733	31KL18	3202	TULOWETKE, AM	05/01/1997	05/15/1997	24.34	365.10
-	733	31KL18	3202	TULOWETKE, AM	05/16/1997	05/31/1997	24.34	365.10
-	733	31KL18	3202	TULOWETKE, AM	06/01/1997	06/03/1997	24.34	73.02
-	733	31KL18	3210	TULOWETKE, AM	10/10/1997	10/30/1997	468.04	322.98
-	733	31KL18	3210	TULOWETKE, AM	11/01/1997	11/30/1997	468.04	468.04

-	733	31KL18	3210	TULOWETKE, AM	12/01/1997	12/31/1997	468.04	468.04
-	733	31KL18	3210	TULOWETKE, AM	01/01/1998	01/31/1998	468.04	468.04
-	733	31KL18	3210	TULOWETKE, AM	02/01/1998	02/28/1998	468.04	468.04
-	733	31KL18	3210	TULOWETKE, AM	03/01/1998	03/02/1998	468.04	30.76
-	733	31KL18	3210	TULOWETKE, AM	03/03/1998	03/31/1998	468.04	446.02
-	733	31KL18	3212	TULOWETKE, AM	04/01/1998	04/30/1998	468.04	468.04
-	733	31KL18	3210	TULOWETKE, AM	05/01/1998	05/31/1998	468.04	468.04
-	733	31KL18	3212	TULOWETKE, AM	06/01/1998	06/30/1998	468.04	468.04
-	733	31KL18	3210	TULOWETKE, AM	07/01/1998	07/31/1998	480.54	480.54
-	733	31KL18	3210	TULOWETKE, AM	08/01/1998	08/31/1998	480.54	480.54
-	733	31KL18	3210	TULOWETKE, AM	09/01/1998	09/30/1998	480.54	480.54
-	733	31KL18	3210	TULOWETKE, AM	10/01/1998	10/25/1998	480.54	394.75
Office:		733	Payment Records: 37		Paid: 8,452.72			
REGION:		0	Payment Records: 40		Paid: 8,616.11			

Ac	V	Ofc	Worker	Srcv	Recipient	Beg date	End Date	Amt Auth	Amt Paid
	-	744	05SS54	3202	SMITH, DENITA	07/21/1997	07/31/1997	25.07	275.77
	-	744	05SS54	3115	SMITH, DENITA	08/01/1997	08/02/1997	102.16	204.32
	-	744	05TI58	3202	SMITH, DENITA	08/07/1997	08/22/1997	25.07	376.05
	-	744	05SS54	3225	SMITH, DENITA	08/11/1997	08/18/1997	99.01	99.01
	-	744	05SS54	3211	SMITH, DENITA	09/04/1997	09/30/1997	468.04	415.26
	-	744	05SS54	3212	SMITH, DENITA	09/04/1997	09/30/1997	146.11	129.60
	-	744	05SS54	3213	SMITH, DENITA	09/04/1997	09/30/1997	285.00	252.72
	-	744	05SS54	3216	SMITH, DENITA	09/04/1997	09/30/1997	200.00	177.39
	-	744	05SS54	3217	SMITH, DENITA	09/04/1997	09/30/1997	2281.85	2025.27
	-	744	05TI58	3225	SMITH, DENITA	09/17/1997	10/08/1997	100.00	100.00
	-	744	05TI58	93202	SMITH, DENITA	09/25/1997	09/29/1997	34.00	170.00
	-	744	05SS54	3216	SMITH, DENITA	10/01/1997	10/31/1997	200.00	200.00
	-	744	05SS54	3217	SMITH, DENITA	10/01/1997	10/31/1997	2281.85	2281.85
	-	744	05SS54	3211	SMITH, DENITA	10/01/1997	10/31/1997	468.04	468.04
	-	744	05SS54	3212	SMITH, DENITA	10/01/1997	10/31/1997	146.11	146.11
	-	744	05SS54	3213	SMITH, DENITA	10/01/1997	10/31/1997	285.00	285.00
	-	744	05TI58	3233	SMITH, DENITA	10/31/1997	10/31/1997	162.54	162.54
	-	744	05TI58	3211	SMITH, DENITA	11/01/1997	11/30/1997	468.04	468.04
	-	744	05TI58	3212	SMITH, DENITA	11/01/1997	11/30/1997	146.11	146.11
	-	744	05TI58	3213	SMITH, DENITA	11/01/1997	11/30/1997	285.00	285.00
	-	744	05TI58	3216	SMITH, DENITA	11/01/1997	11/30/1997	200.00	200.00
	-	744	05TI58	3217	SMITH, DENITA	11/01/1997	11/30/1997	2281.85	2281.85
	-	744	05TI58	3211	SMITH, DENITA	12/01/1997	12/31/1997	468.04	468.04
	-	744	05TI58	3212	SMITH, DENITA	12/01/1997	12/31/1997	146.11	146.11
	-	744	05TI58	3213	SMITH, DENITA	12/01/1997	12/31/1997	285.00	285.00
	-	744	05TI58	3216	SMITH, DENITA	12/01/1997	12/31/1997	200.00	200.00

-	744	05TI58	3217	SMITH, DENITA	12/01/1997	12/31/1997	2281.85	2281.85
-	744	05TI58	3452	SMITH, DENITA	01/01/1998	01/06/1998	3322.00	655.20
-	744	05TI58	3233	SMITH, DENITA	01/08/1998	01/08/1998	63.31	63.31
-	744	05TI58	3452	SMITH, DENITA	01/08/1998	01/31/1998	2985.00	2354.88
-	744	05TI58	3452	SMITH, DENITA	02/01/1998	02/08/1998	2985.00	784.96
-	744	05TI58	3115	SMITH, DENITA	02/09/1998	02/14/1998	102.16	510.80
-	744	05TI58	93115	SMITH, DENITA	02/15/1998	02/17/1998	102.16	306.48
-	744	05TI58	93202	SMITH, DENITA	03/05/1998	03/05/1998	34.00	34.00
				Payment Records: 34		Paid:	19,240.56	
Office:	744			Payment Records: 34		Paid:	19,240.56	
REGION:	0							

Defendants' Exhibit No. 1
Defendants' Response to Plaintiff's
Order To Produce No. 9

Definition, Description and List of
Reimbursable Foster Care Expenses

RE: Document Production No. 9
T List of Reimbursable Expenses
Social Services Payment System
Manual Appendix C

RE: Document Production No. 9

For purpose of responding to paragraph number 9, "reimbursable foster care" means those foster care services for which a parental child support payment or an SSI or SSA benefit may be used to pay for such services when provided to a foster child. A description of all reimbursable foster care services which may be paid from the various state and federal funding sources is found in the enclosed SSPS Appendix C. Also enclosed is a list of "T-payment" codes. The services identified on the T-payment list are the "reimbursable foster care" services.

"T-List" of Reimbursable Expenses

TRSTFUND MAINTIAN TRUST FUND TABLE TRSTFUND TRSTLST

Sel	Srvc	Sel	Srvc	Sel	Srvc	Sel	Srvc
	280		280		280		2807
	280		281		282		2827
	282		282		283		2831
	283		283		283		2835
	283		283		283		2873
	287		310		310		3114
	311		320		320		3203
	321		321		321		3216
	321		321		321		3223
	322		322		323		3233
	323		323		330		3302
	340		341		341		3415
	341		342		342		3433
	343		344		344		3443
	344		344		344		3450

Options: C = Create R = Review U = Update D = Delete

TRSTFUND MAINTIAN TRUST FUND TABLE TRSTFUND TRSTLST

Sel	Srvc	Sel	Srvc	Sel	Srvc	Sel	Srvc
	345		345		345		3455
	345		345		345		3459
	346		346		346		3470
	347		347		349		3495
	390		390		494		92801
	9280		9280		9280		92808
	9281		9282		9282		92828
	9282		9283		9283		92832
	9283		9283		9283		92836
	9283		9283		9287		92874
	9310		9310		9311		93115
	9320		9320		9320		93210
	9321		9321		9321		93218
	9321		9322		9322		93225
	9323		9323		9323		93235

Options: C = Create R = Review U = Update D = Delete

TRSTFUND MAINTIAN TRUST FUND TABLE TRSTFUND TRSTLST

Sel	Srvc
	9330
	9341
	9343
	9344
	9345
	9345
	9345
	9347
	9390

Sel	Srvc
	9340
	9341
	9343
	9344
	9345
	9345
	9346
	9347
	9390

Sel	Srvc
	9341
	9342
	9344
	9344
	9345
	9345
	9346
	9349
	9494

Sel	Srvc
	93412
	93425
	93442
	93448
	93454
	93458
	93462
	93495

Options: C = Create R = Review U = Update D = Delete

Social Services Payment System Manuel
Appendix C

SSPS Manual
Appendix C
Reissued 07/99

SERVICE CODE DATA

154/159
Item No.

PROGRAM: Family Focused Services
EFF. DATE: 11/01/96

35 SERVICE NAME: Special Purchase HBS
SERVICE CODE (Item 36): 2510
SERVICE DESCRIPTION: Payment to non-contracted provider for case specific resources or services to Home Based Serve (HBS) eligible family.

17/26 RECIPIENT STATUS:

	Child	Adult
Primary		X
Service	X	X

32/33 MAXIMUM LENGTH OF SERVICE: 1 month

37 REASON:

CODE:	TITLE
G	Basic Needs
H	Mileage

38 OBJECTIVE:

CODE:	TITLE
E	Placement Prevention
F	Reunification

SSPS Manual
Appendix C
Reissued 07/99
2510 (cont.)

SERVICE CODE DATA (cont.)

PAYMENT DATA:

Payment Type: One-time payment
39-41 Unit of Service: Each (EA)
41 Rate Range: $0.01-$1,500.00
42 Maximum No. of Units: 1

SOURCE OF FUNDS (Item 31):

CODE	TITLE
1	CEAP - IVA
5	State Funds Only
I	Special Project

ADDITIONAL DATA:

1. Source of Funds code I (item31) is used only when providing enhanced HBS with special project funds.

2. Provision of this service is subject to the eligibility requirements, service standards, and procedures in DCFS manual, chapter 25, and in regional HBS policy.

3. Effective March 1, 1990, the "direct-buy limit" has been increased to $800. The direct-buy limit amount may be expended without competitive solicitations, based upon "buyer experience and knowledge of the market in achieving maximum quality at minimum cost, " per RCW 43.19.1906(2). Purchases of general goods and services up to $1,500 can be made provided that three quotes are obtained and documented in the SER, in accordance with RCW 43.19.190(4) and

SSPS Manual
Appendix C
Reissued 07/99
2510 (cont.)

SERVICE CODE DATA (cont.)

ADDITIONAL DATA: (cont.)

3. the Office of State Procurement (OSP) delegation of general authorities. **Purchases over $800 require Regional Business Manager approval.**

4. This code may not be used to purchase services that should be contracted per Chapter 39.29 RCW.

5. Each (EA) may represent any authorized unit of service, such as, one trip, a visit, an item, one month of service, etc.

6. Effective 1/1/96, the department will send a 1099 wage statement to providers paid $600.00 or more in the year.

7. A warrant is issued after the service is closed with a termination code of 1A, 1B, 2A, or 2B, and the end date (Item 33) has passed. Any other termination code prevents payment. The warrant is for the exact amount authorized in item 43. The system does not generate an invoice.

SERVICE CODE DATA

154/159
Item No.

PROGRAM: Crisis Residential Care
EFF. DATE: 07/01/99
35 SERVICE NAME: Family CRC Retainer
SERVICE CODE (Item 36): 3105
SERVICE DESCRIPTION: A monthly fee paid to a Family Crisis Residential Center to assure the availability of a bed on a 24-hour per-day basis. For children/youth who require temporary care on short notice.

17/26 RECIPIENT STATUS: Enter the foster parent name as service recipient. See Additional Data below.

	Child	Adult
Primary		
Service		X

32/33 MAXIMUM LENGTH OF SERVICE: 12 months

37 REASON: None

38 OBJECTIVE: None

PAYMENT DATA:

Payment Type: Invoice
39-41 Unit of Service: Each (EA)
41 Rate Range: $151.78
42 Maximum No. of Units: 2

SOURCE OF FUNDS (Item 31): None

SERVICE CODE DATA (cont.)

ADDITIONAL DATA:

1. No entry is required for primary recipient or eligibility data, Items 17-25.

2. Enter foster parent/group home name in Item 26.

3. Enter 99/99/99 in Item 27.

4. Enter V in Item 29.

5. The department will send a 1099 wage statement to providers paid $600.00 or more in the year.

SSPS Manual
Appendix C
Reissued 07/99

SERVICE CODE DATA

154/159
Item No.

PROGRAM: Crisis Residential Care
EFF. DATE: 01/15/95
35 SERVICE NAME: Regional CRC Slot
SERVICE CODE (Item 36): 3113
SERVICE DESCRIPTION: Payment for unfilled slots in a regional crisis residential center.

17/26 RECIPIENT STATUS: Enter the vendor name as the service recipient. See Additional Data below.

	Child	Adult
Primary Service		X

32/33 MAXIMUM LENGTH OF SERVICE: Should be opened and closed on same day.

37 REASON: None
38 OBJECTIVE: None

PAYMENT DATA:
Payment Type: One-time payment
39-41 Unit of Service: Each (EA)
41 Rate Range: Non-standard as Authorized
42 Maximum No. of Units: 1*

SOURCE OF FUNDS (Item 31): None

SSPS Manual
Appendix C
Reissued 07/99
3113 (cont.)

SERVICE CODE DATA (cont.)

ADDITIONAL DATA:

1. Only designated DCFS regional staff may authorize this service.

2. A payee must be entered in Item 13.

3. Complete the authorization form as usual except:

a. An entry is not required for primary recipient or eligibility data, Items 17-25.

b. Enter regional crisis residential center's name in Item 26.

c. Enter 99/99/99 in Item 27.

d. Enter V in Item 29.

4. Each (EA) equals the number of day unfilled forall slots. Multiply the number of unfilled days times the rate to determine the amount authorized. Only authorize one (I) each (EA) for total amount.

*5. The authorized amount in Item 43 must not exceed $9,999.99. An amount in excess of $9,999.99 or 2-3 (depending on the rate) units must be authorized on additional service lines.

SERVICE CODE DATA (cont.)

ADDITIONAL DATA: (cont.)

6. A warrant is issued after the service is closed with a termination code of 1 A, 1 B, 2A, or 2B, and the end date (item 33) has passed. Any other termination code prevents payment. The warrant is for the exact amount authorized in item 43. The system does not generate an invoice.

SERVICE CODE DATA

154/159
Item No.

PROGRAM: Crisis Residential Care
EFF. DATE: 07/01/97
35 SERVICE NAME: Secure CRC Slot
SERVICE CODE (Item 36): 3118
SERVICE DESCRIPTION: Payment made to assure the availability of a secure crisis residential center beds on a 24 hour per day basis. Service is for youth who require temporary care for up to five days in a secure facility.

17/26 RECIPIENT STATUS: Enter the vendor as the service recipient. See Additional Data below.

	Child	Adult
Primary Service		X

32/33 MAXIMUM LENGTH OF SERVICE: 1 Month

37 REASON: None
38 OBJECTIVE: None

PAYMENT DATA:
Payment Type: One-time payment
39-41 Unit of Service: Each (EA)
41 Rate Range: Non-standard as Authorized

42 Maximum No. of Units: 1

SOURCE OF FUNDS (Item 31): None

SSPS Manual
Appendix C
Reissued 07/99
3118 (cont.)

SERVICE CODE DATA (cont.)

ADDITIONAL DATA:

1. Only designated DCFS regional staff may authorize this service.

2. A payee must be entered in Item 13.

3. Complete the authorization form as usual except:

a. An entry is not required for primary recipient or eligibility data Items 17-25.

b. Enter secure crisis residential center's name in Item 26.

c. Enter 99/99/99 in item 27.

d. Enter V in Item 29.

4. Each (EA) equals the number of slots times the number of days in the month. Only authorize one (I) each (EA) for total amount.

5. The authorized amount in Item 43 must not exceed $9,999.99. An amount in excess of $9,999.99 must be authorized on additional service lines. If authorizing more than one unit, each until must be on a separate service line.

SSPS Manual
Appendix C
Reissued 07/99
3118 (cont.)

SERVICE CODE DATA (cont.)

ADDITIONAL DATA: (cont.)

6. A warrant is issued after the service is closed with a termination code of 1 A, 1 B, 2A, or 2B, and the end date (Item 33) has passed. Any other termination code prevents payment. The warrant is for the exact amount authorized in Item 43. The system does not generate an invoice.

SSPS Manual
Appendix C
Reissued 07/99

SERVICE CODE DATA

154/159
Item No.

PROGRAM: Child Foster Family Care
EFF. DATE: 06/01/94

35 SERVICE NAME: RH Ancillary Support
SERVICE CODE (Item 36): 3208
SERVICE DESCRIPTION: Ancillary support are reimbursements for activities or items enabling receiving homes to provide extra services to youth. Examples of such supports are craft items, recreational materials, tickets to events. Prior approval by DCFS is needed before reimbursement for these costs is made to the receiving home parents.

17/26 RECIPIENT STATUS: Enter the vendor as the service recipient. See Additional Data below.

	Child	Adult
Primary Service		X

32/33 MAXIMUM LENGTH OF STAY: 1 Month

37 REASON:

CODE:	TITLE
A	Regular Receiving Home
B	Specialized Receiving Home

38 OBJECTIVE: None

SERVICE CODE DATA (cont.)

PAYMENT DATA: Paid Outside SSPS

	Payment Type:	None
39-41	Unit of Service:	Each (EA)
41	Rate:	Non-standard as Authorized
42	Maximum No. of Units:	1

SOURCE OF FUNDS: None

ADDITIONAL DATA:

1. Service is available only in Regions 2, 3, and 4 and is limited by funds available to these regions.

2. Each is defined as a specifically authorized unit, e.g., purchase of an item such as craft or recreational materials; a ticket or pass to an event or activity.

3. An entry is not required for primary recipient or eligibility data, Items 17-25.

4. Enter receiving home parent name in Item 26.

5. Enter 99/99/99 in Item 27.

6. Enter V in Item 29.

SERVICE CODE DATA

154/159
Item No.

PROGRAM: Child Foster Family Care
EFF. DATE: 07/01/99
35 SERVICE NAME: DCFS Foster Care Svc
SERVICE CODE (Item 36): 3210
SERVICE DESCRIPTION: Services include placement and counseling with child foster parent(s) to reach goals developed for the child/family. Payment at basic rate for room, board, clothing, and personal incidentals for all children placed in family foster care. Includes case management service provided by DCFS Service Workers to children in substitute care aimed at enabling the child and his/her caretakers to utilize medical, educational, social, and other services necessary or maintaining the child's physical, psychological, and /or developmental health.

17/26 RECIPIENT STATUS: Enter the vendor as the service recipient. See Additional Data below.

	Child	Adult
Primary	X	
Service	X	

21 Entry required. See Appendix C, GENERAL INFORMATION.

32/33 MAXIMUM LENGTH OF SERVICE: 6 months

SERVICE CODE DATA (cont.)

37 REASON:

CODE:	TITLE
A	In-State Placement
B	Out-of-State Placement
C	CPS In-State Placement
D	CPS Out-of-State Placement
E	DDD Child In-State Placement
F	DDD Child Out-of-State Placement

38 OBJECTIVE: None

PAYMENT DATA:
Payment Type: Invoice
39-41 Unit of Service: Month (MON)
41 Rate: Range $344.42 - $490.15
42 Maximum No. of Units: 1

SOURCE OF FUNDS (Item 31):

CODE:	TITLE
1	CEAP IV-A
2	IV-E Court Ordered
4	IV-E Voluntary
5	State Funds Only

Q State Funded - SSI
R State Funded/180 VPA

SSPS Manual
Appendix C
Reissued 07/99
3210 (cont.)

SERVICE CODE DATA (cont.)

ADDITIONAL DATA:

1. Enter foster parent data in Items 7-11.

2. Enter private agency data in Items 12-16.

3. Effective 07/01/99 rates for Item 41 are as follows:

Less than six years of age	$344.42
Six through 11 years of age	$418.44
12 years of age or older	$490.15

Change the rate effective the first of the month in which the child reaches the age of 6 or 12.

4. When a private agency has a contract amendment providing for placement in a nonpayment placement, authorize the placement by using the "9" code, i.e., 93211, and a rate of $0.00.

5. Source of funds codes 2 and 4 are only used when the child is IV-E eligible, **and**

a. Is in custody of DSHS, or

b. The DCFS service worker signs the voluntary placement agreement from DSHS 09-04B(X).

6. The rates are broken out as follows:

Age	Room & Board	Clothing Allowance	Personal Allowance	Total
0-5 years	$258.37	$36.40	$49.65	$344.42
6-11 years	328.02	36.40	54.02	418.44
12+ years	388.90	43.28	57.97	490.15

4. DCFS does not pay for the day the child leaves placement, therefore the service End Date should be the date one day prior to the date the child left placement. See SSPS Basics Manual page 01-12, Section L.

SSPS Manual
Appendix C
Reissued 07/99

SERVICE CODE DATA

154/159
Item No.

PROGRAM: Child Foster Family Care
EFF. DATE: 07/01/99

35 SERVICE NAME: PA Foster Care
SERVICE CODE (Item 36): 3211
SERVICE DESCRIPTION: Payment for the care of a child provided by a private agency foster home, including placement with a licensed or certified legal guardian. Includes case management services provided by DCFS Service Workers to a child in substitute care aimed at enabling the child and his/her caretakers to utilize medical, educational, social, and other services necessary for maintaining the child's physical, psychological, and/or developmental health.

17/26 RECIPIENT STATUS:

	Child	Adult
Primary	X	
Service	X	

21 Entry required. See Appendix C, GENERAL INFORMATION.

32/33 MAXIMUM LENGTH OF SERVICE: 6 months

SERVICE CODE DATA (cont.)

37 REASON:

CODE:	TITLE
A	In-State Placement
B	Out-of-State Placement
C	CPS In-State Placement
D	CPS Out-of-State Placement
E	DDD Child In-State Placement
F	DDD Child Out-of-State Placement

38 OBJECTIVE: None

PAYMENT DATA:
Payment Type: Invoice
39-41 Unit of Service: Month (MON)
41 Rate: Range $344.42 - $490.15
42 Maximum No. of Units: 1

SOURCE OF FUNDS (Item 31):

CODE:	TITLE
1	CEAP - IV-A
2	IV-E Court Ordered
4	IV-E Voluntary
5	State Funds Only
Q	State Funded - SSI
R	State Funded/180 VPA

ADDITIONAL DATA:

1. Enter foster parent data in Items 7-11.

2. Enter private agency data in Items 12-16.

SSPS Manual
Appendix C
Reissued 07/99
3211 (cont.)

SERVICE CODE DATA (cont.)

ADDITIONAL DATA: (cont.)

3. Effective 07/01/99, rates for Item 41 are as follows:

a. Less than six years of age $344.42

b. Six through 11 years of age $418.44

c. 12 years of age or older $490.15

Change the rate effective the first of the month in which the child reaches the age of 6 or 12.

4. When a private agency has a contract amendment providing for placement in a nonpayment placement, authorize the placement by using the "9" code, i.e., 93211, and a rate of $0.00.

5. Source of funds codes 2 and 4 are only used when the child is IV-E eligible, **and**

a. Is in the custody of DSHS, or

b. The DCFS service worker signs the voluntary placement agreement form DSHS 09-04B(X).

SSPS Manual
Appendix C
Reissued 07/99
3211 (cont.)

SERVICE CODE DATA (cont.)

ADDITIONAL DATA (cont.)

6. The rates are broken out as follows:

Age	Room & Board	Clothing Allowance	Personal Allowance	Total
0-5 years	$258.37	$36.40	$49.65	$344.42
6-11 years	328.02	36.40	54.02	418.44
12+ years	388.90	43.28	57.97	490.15

7. DCFS does not pay for the day the child leaves placement, therefore the service End Date should be the date one day prior to the date the child left placement. See SSPS Basics Manual page 01-12, Section L.

SSPS Manual
Appendix C
Reissued 07/99

SERVICE CODE DATA

154/159
Item No.

PROGRAM: Child Foster Family Care
EFF. DATE: 07/01/99

35 SERVICE NAME: FC Spec Rate
SERVICE CODE (Item 36): 3212
SERVICE DESCRIPTION: Special Rates are additional maintenance payments made for children with specific behavioral/emotional problems, or for children that are intellectually/physically handicapped. See additional data below.

17/26 RECIPIENT STATUS:

	Child	Adult
Primary	X	
Service	X	

21 Entry required. See Appendix C, GENERAL INFORMATION.

32/33 MAXIMUM LENGTH OF SERVICE: 6 months

37 REASON:

CODE:	TITLE
A	DCFS-Behavioral/Emotional Problems
B	DCFS-Intellectually/Physically Handicapped
D	PA-Behavior/Emotional Problems

SERVICE CODE DATA (cont.)

37 REASON: (cont.)

CODE:	TITLE
E	PA-Intellectually/Physically Handicapped
G	Out-of-State Behavior/Emotional Problems
H	Out-of-State Intellectually/Physically Handicapped

38 OBJECTIVE: None

PAYMENT DATA:

	Payment Type:	Invoice
39-41	Unit of Service:	Month (MON)
41	Rate:	$0.0 - $149.03
42	Maximum No. of Units:	1

SOURCE OF FUNDS (Item 31):

CODE:	TITLE
1	CEAP - IV-A
2	IV-E Court Ordered
4	IV-E Voluntary
5	State Funds Only
Q	State Funded - SSI
R	State Funded/180 VPA

ADDITIONAL DATA:

1. The special rate payment, 3212, is always used with service code 3210, DCFS Foster Care Svc, or 3211, PA Foster Care Svc, and entered on the same authorization as the basic payment code.

SSPS Manual
Appendix C
Reissued 07/99
3212 (cont.)

SERVICE CODE DATA (cont.)

ADDITIONAL DATA: (cont.)

2. Use the same source of funds (item 31) as 3210 or 3211.

3. DCFS does not pay for the day the child leaves placement, therefore the service End Date should be the date one day prior to the date the child leftplacement. See SSPS Basics Manual page 01-12, Section L.

SSPS Manual
Appendix C
Reissued 07/99

SERVICE CODE DATA

154/159
Item No.

PROGRAM: Child Foster Family Care
EFF. DATE: 07/01/99
35 SERVICE NAME: Svc Fee PA FC
SERVICE CODE (Item 36): 3213
SERVICE DESCRIPTION: The monthly fee paid to private child-placing agency for targeted case management for each child placed in its family

foster care. Includes services to enable the child and caretakers to utilize medical, educational, social, and other services necessary for maintaining the child's physical, psychological, and/or developmental health. See DCFS Manual, Sections 45311 and 45313.

17/26 RECIPIENT STATUS:

	Child	Adult
Primary	X	
Service	X	

21 Entry required. See Appendix C, GENERAL INFORMATION.

32/33 MAXIMUM LENGTH OF SERVICE: 6 months

37 REASON: None

38 OBJECTIVE: None

Appendix C
Reissued 07/99
3213 (cont.)

SERVICE CODE DATA (cont.)

PAYMENT DATA:
Payment Type: Invoice
39-41 Unit of Service: Month (MON)
41 Rate: $290.70
42 Maximum No. of Units: 1

SOURCE OF FUNDS (Item 31): None

ADDITIONAL DATA:

1. Use only in conjunction with service code 3211.

2. A CPA agreement must be signed.

3. Enter foster parent data in Items 7-11.

4. Enter private agency data in Items 12-16.

5. If one private agency borrows a bed from another private agency, DCFS will pay only one service fee.

6. Authorize private agency follow-up services a maximum of six months per private agency placement episode.

7. When a private agency has a contract amendment providing for placement in a nonpayment placement, authorize a service fee by issuing a provider number to the nonpayment placement resource and enter the nonpayment provider number as the provider. Use the private agency provider number as the payee number.

SERVICE CODE DATA (cont.)

ADDITIONAL DATA: (cont.)

8. Use source of funds codes 2 and 4 only when the child is IV-E eligible and:

a. Is in the custody of DSHS, or

b. The Voluntary Placement Agreement form, DSHS 09-004(X) is signed by the DCFS service worker.

SERVICE CODE DATA

154/159
Item No.

PROGRAM: Child Foster Family Care
EFF. DATE: 07/01/99
35 SERVICE NAME: PA Borrowed Home Fee
SERVICE CODE (Item 36): 3215
SERVICE DESCRIPTION: This fee is authorized when DCFS borrows a foster home/bed from a private agency. DCFS only pays the private agency to maintain the foster care license and provide any related licensing services. The code also covers the maintenance of a foster care license for foster parent guardianships in a private agency home. See DCFS Manual, Section 45311.

17/26 RECIPIENT STATUS:

	Child	Adult
Primary	X	
Service	X	

21 Entry required. See Appendix C. GENERAL INFORMATION.

32/33 MAXIMUM LENGTH OF SERVICE: 6 months

37 REASON: None

38 OBJECTIVE: None

SSPS Manual
Appendix C
Reissued 07/99
3215 (cont.)

SERVICE CODE DATA (cont.)

PAYMENT DATA:
Payment Type: Invoice
39-41 Unit of Service: Month (MON)
41 Rate: $164.66
42 Maximum No. of Units: 1

SOURCE OF FUNDS (Item 31): None

ADDITIONAL DATA:

1. A CPA Agreement must be signed when borrowing homes/beds and for PA licensed foster parent guardianships.

2. This fee may be paid for up to two children per home.

3. Enter foster parent data in Items 7-11.

4. Enter private agency data in Items 12-16.

SSPS Manual
Appendix C
Reissued 07/97
3216 (cont.)

SERVICE CODE DATA (cont.)

154/159
Item No.

PROGRAM: Child Foster Family Care
EFF. DATE: 06/01/94
35 SERVICE NAME: FC Except Cost Maint
SERVICE CODE (Item 36): 3216
SERVICE DESCRIPTION: FC Exceptional Cost Maintenance is a DCFS Administrator/designee approved payment for additional maintenance costs for children with highly individualized needs and where no other SSPS code applies. This code is to be used only for the purchase of foster parent time and expertise necessary to perform exceptionally demanding supervision, physical care, or other activities related to the care of a child. Items/activities authorized and purchased using this code must be part of an overall

case plan and specifically related to the goals of the permanency plan.

17/26 RECIPIENT STATUS:

	Child	Adult
Primary	X	
Service	X	

21 Entry required. See Appendix C, GENERAL INFORMATION.

32/33 MAXIMUM LENGTH OF SERVICE: 6 months

SSPS Manual
Appendix C
Reissued 07/97
3216 (cont.)

SERVICE CODE DATA (cont.)

37 REASON:

CODE:	TITLE
A	DCFS-Behavioral/Emotional Problems
B	DCFS-Intellectually/Physically Handicapped
D	PA-Behavior/Emotional Problems
E	PA-Intellectually/Physically Handicapped
G	Out-of-State Behavior/Emotional Problems
H	Out-of-State Intellectually/Physically Handicapped

38 OBJECTIVE:

CODE:	TITLE
A	DCFS-Exceptional Cost FC
B	PA Exceptional Cost FC

PAYMENT DATA:
Payment Type: Invoice
39-41 Unit of Service: Month (MON)
41 Rate: Nonstandard as Authorized
42 Maximum No. of Units: 1

SOURCE OF FUNDS (Item 31):

CODE:	TITLE
1	CEAP - IV-A
2	IV-E Court Ordered
4	IV-E Voluntary
5	State Funds Only
Q	State Funded - SSI
R	State Funded/180 VPA

SSPS Manual
Appendix C
Reissued 07/97
3216 (cont.)

SERVICE CODE DATA (cont.)

ADDITIONAL DATA: (cont.)

1. Exceptional Cost FC is always used with service code 3210, DCFS Foster Care Svc, or

3211, PA Foster Care Svc, and entered on the same authorization as the basic payment code.

2. Use the same source of funds (item 31) as 3210 or 3211.

3. When a Private Agency receives the Exceptional Cost FC payment, an exceptional cost Foster Care Plan must be signed by the DCFS Administrator and Private Agency designee prior to authorization.

4. When Exceptional Cost FC is authorized the DCFS supervisor's signature is required in the special instructions section at the bottom of the DSHS 14-154/159.

SERVICE CODE DATA

154/159
Item No.

PROGRAM: Child Foster Family Care
EFF. DATE: 06/01/94
35 SERVICE NAME: FC Except Cost Nonmaint
SERVICE CODE (Item 36): 3217
SERVICE DESCRIPTION: FC Exceptional Cost Nonmaintenance is a DCFS Administrator/ designee approved payment for enhanced <u>services</u> to children with unique needs and where no other SSPS

Code applies. Do not use this code for psych/psych services or for service related to exceptional cost payments for the physical care or supervision of the child. Items/activities authorized and purchased using this code must be part of an overall case plan and specifically related to the goals of the case plan. Typically, they are activity related to skill building or the development of an enhanced self-image. Examples are: music lessons, participation in recreational activities, specialized speech, biofeedback therapy, etc.

17/26 RECIPIENT STATUS:

	Child	Adult
Primary	X	
Service	X	

21 Entry required. See Appendix C, GENERAL INFORMATION.

32/33 MAXIMUM LENGTH OF SERVICE: 6 months

SERVICE CODE DATA (cont.)

37 REASON:

CODE:	TITLE
A	DCFS-Behavioral/Emotional Problems
B	DCFS-Intellectually/Physically Handicapped
D	PA-Behavior/Emotional Problems
E	PA-Intellectually/Physically Handicapped
G	Out-of-State Behavior/Emotional Problems
H	Out-of-State

Intellectually/Physically Handicapped

38 OBJECTIVE:

CODE:	TITLE
A	DCFS-Exceptional Cost FC
B	PA Exceptional Cost FC

PAYMENT DATA:

	Payment Type:	Invoice
39-41	Unit of Service:	Month (MON)
41	Rate:	Nonstandard as Authorized
42	Maximum No. of Units:	1

SOURCE OF FUNDS (Item 31):

CODE:	TITLE
1	CEAP - IV-A
5	State Funds Only

SERVICE CODE DATA (cont.)

ADDITIONAL DATA:

1. Exceptional Cost FC is always used with service code 3210, DCFS Foster Care Svc, or 3211, PA Foster Care Svc.

2. When a Private Agency receives the Exceptional Cost FC payment, an exceptional cost Foster Care Plan must be signed by the DCFS Administrator and Private Agency designee prior to authorization.

3. When Exceptional Cost FC is authorized, the supervisor's signature is required in the special instructions section at the bottom of the DSHS 14-154/159.

4. Counseling, consultation, and child care services are opened under separate SSPS Service Codes.

SERVICE CODE DATA (cont.)

154/159
Item No.

PROGRAM: Child Foster Family Care
EFF. DATE: 07/01/99

35 SERVICE NAME: FC Respite-Daily
SERVICE CODE (Item 36): 3219
SERVICE DESCRIPTION: Respite care by the day for receiving and ongoing foster homes and for adoptive families on the Adoption Support Program. Payments are made to the foster parent or adoptive parent to purchase relief supervision and additional supervision for special activities from and individual provider.

17/26 RECIPIENT STATUS:

	Child	Adult
Primary	X	
Service	X	

32/33 MAXIMUM LENGTH OF SERVICE: 6 months

37 REASON:

CODE:	TITLE
A	Receiving Home DD Child
B	Receiving Home Non DD Child
C	Ongoing Home DD Child
D	Ongoing Home Non DD Child
E	Adoption Support DD Child
F	Adoption Support Non-DD Child

SSPS Manual
Appendix C
Reissued 07/99
3219 (cont.)

SERVICE CODE DATA (cont.)

38 OBJECTIVE: None

PAYMENT DATA:
Payment Type: Invoice
39-41 Unit of Service: Day (DA)
41 Rate: Range $0.01 - $54.65
42 Maximum No. of Units: 20

SOURCE OF FUNDS (Item 31):

CODE:	TITLE
5	State Funds Only

ADDITIONAL DATA:

1. Maximum payment rates:

Light Care	$49.97
Moderate Care	$52.15
Heavy Care	$54.65

2. OASI withholding applies.

3. Always enter the Respite Care provider's name in Items 7-11. Enter the Foster Parent's names as payee in Items 12-16.

4. Rates quoted above are the maximum allowed. Regions may set lower rates.

SSPS Manual
Appendix C
Reissued 07/99
3219 (cont.)

SERVICE CODE DATA (cont.)

ADDITIONAL DATA: (cont.)

5. Enter the correct provider information in Items 7-11. The department sends a W-2 to providers earning $1,100.00 or more in a year. To avoid erroneous income reports tot he Internal Revenue Service, report provider changes promptly.

6. Only Adoption Support Program Managers authorize this service for Reason Code "E" or "F."

7.Eligibility for this service, Reason Codes "E" or "F, " is limited to those children for whom eligibility for the Adoption Support Program was determined on or after July 1, 1996.

SERVICE CODE DATA

154/159
Item No.

PROGRAM: Child Foster Family Care
EFF. DATE: 07/01/99
35 SERVICE NAME: FC Personal Incidentals
SERVICE CODE (Item 36): 3224
SERVICE DESCRIPTION: An amount paid to receiving home parents as reimbursement

covering personal incidentals required by a child in shelter receiving care.

17/26 RECIPIENT STATUS:

	Child	Adult
Primary	X	
Service	X	

21 Entry required. See Appendix C, GENERAL INFORMATION.

32/33 MAXIMUM LENGTH OF SERVICE: 1 month – should be opened and closed on the same date.

37 REASON:

CODE:	TITLE
A	Child in Regular DCFS Receiving Care
B	Child in Specialized DCFS Shelter/Receiving Care
C	Child in Regular PA Receiving Care

SERVICE CODE DATA (cont.)

37 REASON: (cont.)

CODE:	TITLE
D	Child in Specialized PA Shelter/ Receiving Care

38 OBJECTIVE: None

PAYMENT DATA:
Payment Type: Invoice
39-41 Unit of Service: Each (EA)
41 Rate: Range $0.01 - $57.97
42 Maximum No. of Units: 1

SOURCE OF FUNDS (Item 31):

CODE:	TITLE
1	CEAP - IVA
2	IV-E Court Ordered
4	IV-E Voluntary
5	State Funds Only
Q	State Funded - SSI
R	State Funded/180 VPA

ADDITIONAL DATA:

1. Rates vary as to age of the child:
   0-5 years $49.65
   6-11 years 54.02
   12+ years 57.97

SERVICE CODE DATA (cont.)

ADDITIONAL DATA: (cont.)

2. If the foster parent is to receive reimbursement directly, enter the foster parent data in Items 7-11 and leave Items 12-16 blank.

3. For PA reimbursement, if the private agency is to receive and distribute the money to the foster parent, enter the foster parent data in Items 7-11 and private agency data in Items 12-16.

SERVICE CODE DATA

154/159
Item No.

PROGRAM: Child Foster Family Care
EFF. DATE: 06/01/94
35 SERVICE NAME: FC Clothing (Special)
SERVICE CODE (Item 36): 3225
SERVICE DESCRIPTION: Payment for initial clothing purchased for a child in receiving/shelter care; or clothing purchased by exception in excess of the monthly clothing allowance for a child in foster family care. (See DCFS Practice and Procedures Guide, Chapter 4000 – Child Welfare Services – 45373)

17/26 RECIPIENT STATUS:

	Child	Adult
Primary	X	
Service	X	

21 Entry required. See Appendix C, GENERAL INFORMATION.

32/33 MAXIMUM LENGTH OF SERVICE: 1 month

37 REASON:

CODE:	TITLE
A	DCFS Foster/Receiving Care
B	PA Foster/Receiving Care
C	CRC

SERVICE CODE DATA (cont.)

38 OBJECTIVE:

CODE:	TITLE
A	To Purchase Initial Clothing (Shelter/Receiving)
B	To Purchase Clothing by Additional Payment Approval

PAYMENT DATA:
Payment Type: One-Time Payment

39-41 Unit of Service: Each (Ea)
41 Rate: Range $0.01 - $200.00
42 Maximum No. of Units: 1

SOURCE OF FUNDS (Item 31):

CODE:	TITLE
1	CEAP - IV-A
2	IV-E Court Ordered
4	IV-E Voluntary
5	State Funds Only
Q	State Funded - SSI
R	State Funded/180 VPA

ADDITIONAL DATA:

1. Do not use source of funds code 1 (CEAP IV-A) unless an eligibility determination had been completed by an Eligibility Specialist, verifying the client is IV-A (CEAP) eligible. Source of funds code 1 can only be authorized within the first 30 days of placement.

SERVICE CODE DATA (cont.)

ADDITIONAL DATA: (cont.)

2. Purchase amount shall not exceed $100.00 unless approved by DCFS Administrator/designee.

3. If the foster parent is to receive reimbursement directly, enter the foster parent date in Items 7-11 and leave Items 12-16 blank.

4. For PA reimbursement, if the private agency is to receive and distribute the money to the foster parents, enter the foster parent data in Items 7-11 and the private agency data in Items 12-16.

5. Use of Objective Code B requires DCFS Administrator/designee approval on DSHD 05-195(X), Additional Payment Request.

6. A warrant is issued after the service is closed with a termination code of 1A, 1B, 2A, or 2B, and the end date (item 33) has passed. Any other termination code prevents payment. The warrant is for the exact amount authorized in item 43. The system does not generate an invoice.

SERVICE CODE DATA

154/159
Item No.

PROGRAM: Child Foster Family Care

EFF. DATE: 07/01/96

35 SERVICE NAME: FC Psych Eval/Rpt
SERVICE CODE (Item 36): 3232
SERVICE DESCRIPTION: Arranging for and making payment to a psychologist/psychiatrist or other qualified person for an evaluation of a child/parent/foster parent. Authorize this service to assist in preventing placement, or when making an appropriate foster care placement, or implementing a permanent plan. This includes a written report and if needed, case consultation. Regional and/or DCFS approval must be documented in the service record as appropriate.

17/26 RECIPIENT STATUS:

	Child	Adult
Primary	X	
Service	X	X

21 Entry required. See Appendix C, GENERAL INFORMATION.

32/33 MAXIMUM LENGTH OF SERVICE: 3 months

37 REASON:

CODE: **TITLE**
I Evaluation/Consultation/Report by Psychologist/Psychiatrist

SERVICE CODE DATA (cont.)

37 REASON: (cont.)

CODE:	TITLE
J	Evaluation/Consultation/Report by Appropriate Person Other than Psychologist/Psychiatrist

38 OBJECTIVE:

CODE:	TITLE
B	To Prevent Foster Care Placement
C	To Assist in Making/Maintaining Appropriate Placement
D	To Implement a Permanent Plan

PAYMENT DATA:

	Payment Type:	Invoice
39-41	Unit of Service:	Hour (HR)
41	Rate: -	Range $0.00 - $105.00
42	Maximum No. of Units:	10

SOURCE OF FUNDS (Item 31):

CODE:	TITLE
1	CEAP - IVA
5	State Funds Only

ADDITIONAL DATA:

1. Provision of the services included in this code are subject to the contract terms and funding limitations. (See DCFS Practices and Procedures Guide, Chapter 4000 – Child Welfare Services – 4521).

SSPS Manual
Appendix C
Reissued 07/99
3232 (cont.)

SERVICE CODE DATA (cont.)

ADDITIONAL DATA: (cont.)

2. This code is also used by Adoption Services.

3. Department sends a 1099 statement at the end of the year to any provider paid $600.00 or more.

SSPS Manual
Appendix C
Reissued 07/99

SERVICE CODE DATA

154/159
Item No.

PROGRAM: Child Foster Family Care
EFF. DATE: 06/01/94
35 SERVICE NAME: FC Transportation
SERVICE CODE (Item 36): 3233

SERVICE DESCRIPTION: Payment for the cost of transportation and associated expenses as approved by DCFS incurred by/on behalf of a child in foster care, receiving FRS services, adoption services, or for return of a runaway. Payment may be made directly to a vendor or to a foster parent for reimbursement of expenses.

17/26 RECIPIENT STATUS:

	Child	Adult
Primary	X	X
Service	X	X

21 Entry required. See Appendix C, GENERAL INFORMATION.

32/35 MAXIMUM LENGTH OF SERVICE: 1 month

37 REASON:

CODE:	TITLE
T	Visitations to Child's Home
U	Transportation by Foster Care Provider
W	Other

SERVICE CODE DATA (cont.)

38 OBJECTIVE: None

PAYMENT DATA:

Payment Type: One-Time Payment
39-41 Unit of Service: Each (EA)
41 Rate: Range $0.01 - $1,000.00
42 Maximum No. of Units: 1

SOURCE OF FUNDS (Item 31):

CODE:	TITLE
1	CEAP - IVA
2	IV-E Court Ordered
4	IV-E Voluntary
5	State Funds Only
Q	State Funded - SSI
R	State Funded/180 VPA

ADDITIONAL DATA:

1. Payment is made directly to vendor for amount of fare.

2. If a foster parent is to receive a reimbursement directly, enter the foster parent date in Items 7-11 and leave Items 12-16 blank.

3. For PA reimbursement, if the private agency is to receive and distribute the money to the foster parents, enter the foster parent data in Items 7-11 and private agency data in Items 12-16.

SERVICE CODE DATA (cont.)

ADDITIONAL DATA: (cont.)

4. When expenses are reimbursed on a per mile basis, calculate total expenses and authorize in one payment. Record calculations in "Special Instructions."

5. Total trip, payments in excess of $200.00 require the DCFS supervisor's approval. The supervisor initials the DSHS 14-154/159.

6. Payments for air and rail travel must be authorized using SSPS Service Code 3234, BTA Transportation.

7. A warrant is issued after the service is closed with a termination code of 1A, 1B, 2A, or 2B, and the end date (item 33) has passed. Any other termination code prevents payment. The warrant is for the exact amount authorized in item 43. The system does not generate an invoice.

SERVICE CODE DATA

154/159
Item No.

PROGRAM: Child Foster Family Care
EFF. DATE: 06/01/94

35 SERVICE NAME: FC BTA Transportation
SERVICE CODE (Item 36): 3234
SERVICE DESCRIPTION: Payment for the cost of air and rail transportation and associated expenses charged to the Business Travel Account (BTA) as approved by DCFS, incurred by/on behalf of a child in foster care, receiving FRS services, adoption services, or for return of a runaway. Payment may be made directly to a vendor.

17/26 RECIPIENT STATUS:

	Child	Adult
Primary	X	X
Service	X	X

21 Entry required. See Appendix C, GENERAL INFORMATION.

32/33 MAXIMUM LENGTH OF SERVICE: 1 month

37 REASON:

CODE:	TITLE
T	Visitations to Child's Home
W	Other

38 OBJECTIVE: None

SERVICE CODE DATA (cont.)

PAYMENT DATA:

	Payment Type:	One-Time Payment
39-41	Unit of Service:	Each (Ea)
41	Rate:	Range $0.01 - $1,000.00
42	Maximum No. of Units:	1

SOURCE OF FUNDS (Item 31):

CODE:	TITLE
1	CEAP - IVA
2	IV-E Court Ordered
4	IV-E Voluntary
5	State Funds Only
Q	State Funded - SSI
R	State Funded/180 VPA

ADDITIONAL DATA:

1. Payment is made directly to vendor for amount offare.

2. Total trip payments in excess of $400.00 require the supervisor's approval. The supervisor initials the DSHS 14-154/159.

3. Authorizing worker completes the DSHS 14-154 and forwards it to the Regional Business Manager.

4. The Regional Business Manager reviews the DSHS 14-154 and forwards it on for processing.

SSPS Manual
Appendix C
Reissued 07/99
3234 (cont.)

SERVICE CODE DATA (cont.)

5. Payments for bus fare and mileage reimbursement must be authorized through SSPS Service Code 3233, Transportation.

6. A warrant is issued after the service is closed with a termination code of 1A, 2A, 1B, or 2B, and the end date (item 33) has passed. Any other termination code prevents payment. The warrant is for the exact amount authorized in item 43. The system does not generate an invoice.

SSPS Manual
Appendix C
Reissued 07/99

SERVICE CODE DATA

154/159
Item No.

PROGRAM: Child Foster Family Care
EFF. DATE: 07/01/96
35 SERVICE NAME: FC Psych Treatment/Rpt

SERVICE CODE (Item 36): 3235

SERVICE DESCRIPTION: Arranging for and making payment to a psychologist/psychiatrist or other appropriate person for treatment of a child and/or parent(s) necessary to assist in preventing out-of-home placement, making an appropriate out-of-home placement, or implementing a permanent plan. This includes a written report of the treatment outcomes. DCFS and/or regional approval, as appropriate, must be documented in the service record.

17/26 RECIPIENT STATUS:

	Child	Adult
Primary	X	
Service	X	X

21 Entry required. See Appendix C, GENERAL INFORMATION.

32/33 MAXIMUM LENGTH OF SERVICE: 3 months

37 REASON:

CODE:	TITLE
E	Treatment/Report by Psychologist/Psychiatrist

SERVICE CODE DATA (cont.)

37 REASON: (cont.)

CODE:	TITLE
F	Treatment/Report by Appropriate Person Other than Psychologist/ Psychiatrist

38 OBJECTIVE

CODE:	TITLE
B	To Prevent Out-of-Home Placement
C	To Assist in Making or Maintaining Appropriate Placement
D	To Implement a Permanent Plan

PAYMENT DATA:

Payment Type: Invoice

39-41 Unit of Service: Hour (Hr)

41 Rate: Range $0.00 - $110.00

42 Maximum No. of Units: 15

SOURCE OF FUNDS (Item 31):

CODE:	TITLE
1	CEAP - IV-A
5	State Funds Only

ADDITIONAL DATA:

1. Provision of the services included in this code are subject to contract terms and funding limitations. (see DCFS Practices and Procedures Guide, Chapter 4000 – Child Welfare Services – 4521).

SSPS Manual
Appendix C
Reissued 07/99
3235 (cont.)

SERVICE CODE DATA (cont.)

ADDITIONAL DATA: (cont.)

2. This code is used by Adoption Services.

3. The department sends a 1099 statement at the end of the year to any provider paid $600.00 or more.

SSPS Manual
Appendix C
Reissued 07/99

SERVICE CODE DATA

154/159
Item No.

PROGRAM: Child Foster Family Care
EFF. DATE: 07/01/99
35 SERVICE NAME: Reg Receiving Retainer
SERVICE CODE (Item 36): 3241
SERVICE DESCRIPTION: The monthly fee paid to receiving home foster parents to assure the availability of a bed on a 24-hour-per-day basis for children who require temporary care on short notice.

17/26 RECIPIENT STATUS: Enter the foster parent name as service recipient. See Additional Data below.

	Child	Adult
Primary		
Service		X

32/33 MAXIMUM LENGTH OF SERVICE: 6 months

37 REASON: None

38 OBJECTIVE: None

PAYMENT DATA:
Payment Type: Invoice
39-41 Unit of Service: Each (EA)
41 Rate Range: $51.12
42 Maximum No. of Units: 6

SOURCE OF FUNDS (Item 31): None

SSPS Manual
Appendix C
Reissued 07/99
3241 (cont.)

SERVICE CODE DATA (cont.)

ADDITIONAL DATA:

1. This service does not prorate and should always be authorized for the full month.

2. An entry is not required for primary recipient or eligibility data, Items 17-25.

3. Enter foster parent name in Item 26.

4. Enter 99/99/99 in Item 27.

5. Enter V in Item 29.

6. New home may not be added without approval of DCFS RA or designee.

7. Effective 1/1/96 the department will send a 1099 wage statement to providers paid $600.00 or more in the year.

SERVICE CODE DATA

154/159
Item No.

PROGRAM: Behavior Rehabilitation Svcs.
EFF. DATE: 01/01/95
35 SERVICE NAME: Residential Assessment
SERVICE CODE (Item 36): 3418
SERVICE DESCRIPTION: Payment for maintenance services provided by a short-term residential facility for the purposes of providing an assessment and/or diagnosis, development, and implementation of a treatment plan and assisting

DCFS in identifying appropriate levels of service for children.

17/26 RECIPIENT STATUS:

	Child	Adult
Primary	X	
Service	X	

21 Entry required. See Appendix C, General Information.

32/33 MAXIMUM LENGTH OF SERVICE: 3 months

37 REASON:

CODE: **TITLE**
A Nonprofit agency providing services
B For profit agency, Service Alternatives, providing services

SERVICE CODE DATA (cont.)

38 OBJECTIVE: None

PAYMENT DATA:
Payment Type: Invoice Payment
39-41 Unit of Service: Month (MON)

41 Rate: Vendor Unique (see provider file)

42 Maximum No. of Units: 1

SOURCE OF FUNDS (Item 31):

CODE:	TITLE
1	CEAP (Title IV-A)
2	IV-E Court Ordered
4	IV-E Voluntary
5	State Funds Only
Q	State Funded - SSI
R	State Funded/180 VPA

ADDITIONAL DATA:

1. Service is limited to a maximum of 90 days.

2. Approval for services must be received fromthe DCFS Group Care Coordinator.

SERVICE CODE DATA

154/159
Item No.

PROGRAM: Behavior Rehabilitation Svcs.
EFF. DATE: 05/01/95

35 SERVICE NAME: Medically Fragile
SERVICE CODE (Item 36): 3448
SERVICE DESCRIPTION: Payment for services to children who require complex medical care for a condition of such severity/complexity that skilled nursing care is required. This service includes rehabilitation services provided by contractor staff to remediate developmental, behavioral, and psycho-social conditions in children.

17/26 RECIPIENT STATUS:

	Child	Adult
Primary	X	
Service	X	

21 Entry required. See Appendix C, General Information

32/33 MAXIMUM LENGTH OF SERVICE: 6 months

37 REASON:

CODE:	TITLE
A	Nonprofit agency providing services in out-of-home placement

SERVICE CODE DATA (cont.)

37 REASON: (cont.)

CODE:	TITLE
B	Nonprofit agency providing services in child's own home
C	For profit agency (Service Alternatives) providing services in out-of-home placement
D	For profit agency (Service Alternatives) providing services in child's own home

38 OBJECTIVE: None

PAYMENT DATA:

	Payment Type:	Invoice Payment
39-41	Unit of Service:	Month (MON)
41	Rate:	Vendor Unique (see provider file)
42	Maximum No. of Units:	1

SOURCE OF FUNDS (Item 31):

CODE:	TITLE
1	CEAP - IV-A
2	IV-E Court Ordered
4	IV-E Voluntary
5	State Funds Only
9	CAP Waiver Client
Q	State Funded - SSI
R	State Funded/180 VPA

SERVICE CODE DATA (cont.)

ADDITIONAL DATA:

1. Approval for services must be received from the DCFS Group Care Coordinator.

2. Source of funds Code 9, CAP Waiver Client, must only be used when services are provided by Echo SRS.

SERVICE CODE DATA

154/159
Item No.

PROGRAM: Behavior Rehabilitation Svcs.
EFF. DATE: 01/01/95
35 SERVICE NAME: IA Extreme Beh/Emo Dis
SERVICE CODE (Item 36): 3455
SERVICE DESCRIPTION: Payment for maintenance and/or services to children with extreme behavioral/emotional disorders. This service includes rehabilitation services provided by

contractor staff to remediate developmental. behavioral, and psycho-social conditions in children.

17/26 RECIPIENT STATUS:

	Child	Adult
Primary	X	
Service	X	

21 Entry required. See Appendix C, General Information

32/33 MAXIMUM LENGTH OF SERVICE: 6 months

37 REASON:

CODE:	TITLE
A	Nonprofit agency providing services in out-of-home placement

SERVICE CODE DATA (cont.)

37 REASON: (cont.)

CODE:	TITLE
B	Nonprofit agency providing services in child's own home
C	For profit agency (Service Alternatives) providing services in out-of-home placement

D	For profit agency (Service Alternatives) providing services in child's own home

38 OBJECTIVE: None

PAYMENT DATA:

	Payment Type:	Invoice Payment
39-41	Unit of Service:	Month (MON)
41	Rate:	Vendor Unique (see provider file)
42	Maximum No. of Units:	1

SOURCE OF FUNDS (Item 31):

CODE:	TITLE
1	CEAP (Title IV-A)
2	IV-E Court Ordered
4	IV-E Voluntary
5	State Funds Only
Q	State Funded - SSI
R	State Funded/180 VPA

SERVICE CODE DATA (cont.)

ADDITIONAL DATA:

Approval for services must be received from the DCFS Group Care Coordinator.

SUPERIOR COURT OF WASHINGTON FOR
THURSTON COUNTY

DANIEL DILLON and TIMOTHY MILLER,	)	
Petitioner,	)	
vs.	)	No. 97-2-0813-9 98-2-1524-9
STATE OF WASHINGTON, DSHS,	)	
Respondent.	)	

ARGUMENT OF COUNSEL and COURT'S RULING

BE IT REMEMBERED that on March 23, 1999, the above-entitled and numbered cause came on for hearing before the HONORABLE RICHARD A. STROPHY, Judge of Thurston County Superior Court.

APPEARANCES OF COUNSEL:

For the Petitioners	THOMAS FOX Legal Services 9601 Steilacoom Blvd SW Ft. Steilacoom, Washington 98498-7213
For the Respondent	DEBRA E. CASPARIAN Attorney General's Office P.O. Box 40124 Olympia, WA 98504-0124

REPORTED BY: Aurora J. Shackell, Official Court Reporter C.S.R. No SHACKAJ334KD.

THE COURT: The matter before the Court is Timothy Miller and Daniel Dillon, petitioners, versus State of Washington Department of Social and Health Services, respondent, cause number 97-2-813-9 -- apparently, these are consolidated matters -- along with cause number 98-2-1524-9.

Comes on at this time for hearing on the challenge of the petitioners to the Department of Social and Health Services Financial Recovery Office's alleged levy against social security funds drawn by the petitioners pursuant to a notice and finding of responsibility for the costs of petitioners' care as patients involuntarily committed to Western State Hospital.

I've received briefs of counsel Mr. Thomas Fox for petitioners and the response brief of Department of Social and Health Services, Assistant Attorney General Deborah Casparian, a reply belief on behalf of the petitioners, and I've received and reviewed the record below. It appears that the issues presented here are legal issues in nature, and there's no real contest as to the factual basis for the issues that are set forth in the record, so I've focused on those issues rather than any other concern.

Are there any preliminary comments from counsel before argument? Okay. I'll hear first from petitioner, Mr. Fox.

MR. FOX: Thank you, Your Honor.

THE COURT: Do you want to argue from counsel table? That's fine if you're comfortable there,

as long as I can hear you, or you can argue from the podium. Whatever you're comfortable doing.

MR. FOX: I'm not comfortable at all, but we'll give it a try from here, Your Honor. If you have difficulty hearing me, please let me know, and I can move forward to the podium. I represent, of course, Daniel Dillon and Timothy Miller, who are involuntarily -- or at the time this issue arose, were involuntarily committed. I believe Mr. Miller is. Mr. Dillon may be in the community now. At the time I received a waiver of appearance from both of them, I explained this would be in the nature of appellant argument and they need not be there, and they agreed. Further, there would be complications escorting them down here. So they've agreed to let me argue their case for them today.

Your Honor, you've reviewed the files, and I think you probably have a good picture today. I'll try and be concise. What brings us here today is what I consider to be a very unfair situation at Western State Hospital, a situation that is best described in a brief scenario. Perhaps you and I could tragically be afflicted with mental illness right now because of our actions, and we might be involuntarily committed to Western State Hospital. We could apply for and receive as disabled persons social security disability income, and, in our cases, probably based on our work history, SSA, as it's called.

THE COURT: Are those two distinct funds, or is SSA what you referred to as social security disability income?

MR. FOX: Yes. It's a bit complex. There's an SSI. SSI is a needs-based income guaranteed to all

citizens in this country which arose, I think, out of the New Deal Era back in the thirties. That is not the funds -- those are not the funds in question today. Today, the funds are earned through a work history that the individual has performed, much like a Federal insurance policy. And those funds are then awarded or granted on either achievement of a certain old age, 62 or 65, or, in this case, on a showing of a disability. Both the clients here have a mental disability and have qualified for their social security funds, and they're variously OASDI, SSA or Title II benefits. All of those terms are used throughout the court documents and pleadings here.

But when I'm talking about social security, I'm talking about that one class where we've earned them much like an insurance policy from our work history.

I should tell the Court, then, if a person receives SSI in the community and they have a minimum -- they don't have a work history and they have a minimum number of assets, if they receive -- and go to the hospital, that automatically stops SSA because it's more like an insurance policy that was earned. Does not necessarily stop. It continues to run to the most of the patients.

THE COURT: We're talking SSA, OASDI?

MR. FOX: Yes, OASDI. Okay. You and I could, supposedly, if we were ill, receive this SSA disability income, and we might each get $500 a month. When we move into the hospital, we could have the same diagnosis, same prognosis for release. We could be assigned to the same ward. We could be roommates in Western State Hospital. But if you

were fortunate enough to have a family member, a spouse, a parent or perhaps a child who went to social security and applied to be your payee, the State because of the Federal prohibitions would not be allowed to impose a debt on your social security income.

I should clarify here that I'm assuming that we only have social security income. If there are other assets, we do not question the State's ability to bill against those. But you and I receive only social security disability. We go to the hospital. You have a family member payee. And the law prohibits the State from even sending an NFR to these people based on our social security income.

If I have to my disadvantage no family member, no contact in the community, no one that can become my payee, Western State applies to be my payee, and they then subject me to this bill, this levy, called a "Notice of Finding of Responsibility." They subtract 42 -- 41.62, I believe, which is a mandatory exemption, which comes out to about ten dollars a week, and they bill me for the rest. And because they are my payee, the accounting office sends that money -- as noted in the initial decision by Judge Heller in the Dillon case, it goes right to OFR.

So they get my money, and they don't get yours. The upshot of that is that I, as a person who has -- have little resources at the end of, say, six months, and we're both ready to be released. We get $500. You might have $3,000 to get a deposit on an apartment, some furniture, maybe a TV. If I've spent my ten dollars a week, I have nothing. I'm relying on community shelters, on missions and

whatever else. This is obviously an unfair and unequal situation and why we bring this matter to this Court today.

Now, how did this situation arise? I'm looking now at a -- at the agreed order between the Attorney General of Washington and, at that time, the Plaintiffs, the Evergreen Legal Services in the *Brinkman vs. Rahm* case. The agreed order signed by the United States District Judge in December of 1988 –

THE COURT: I don't believe I have a copy of that. Was it submitted?

MR. FOX: Perhaps not, Your Honor.

THE COURT: Did the Attorney General submit that with the materials?

MR. FOX: You know, there's so much material, maybe the Court didn't get one. I don't know. Could I hand one up at this point?

THE COURT: If there's no objection.

MS. CASPARIAN: I have no objection, Your Honor.

THE COURT: Okay. Thank you. I can use this as a bench copy? You have your own copy?

MR. FOX: We each have copies.

THE COURT: Thank you.

MR. FOX: Part of that order that I'm referring to as the outcome of the *Brinkman vs. Rahm* decision as reported at 878 Fed 2d 263, the 9th Circuit opinion -- this was the agreed order, as I said, between the State and the plaintiffs' attorneys.

And on page six, number two, it says "Notice to patients: The defendant shall distribute copies of attachment B to this order to the patients as follows: To every current patient at Eastern or Western State Hospital at the time, regardless of who their payee was --

THE COURT: You're on page two?

MR. FOX: Page six.

THE COURT: Six.

MR. FOX: Number two.

THE COURT: Number two. Thank you.

MR. FOX: It says the defendants -- "The state hospital shall distribute," and then it goes on to say, "A copy shall be posted at patient windows at the hospital accounting offices, remained posted indefinitely. Replace these copies with fresh copies as needed." I refer, then, to attachment B which the Court has ordered delivered to every patient at the hospital. And, in pertinent part, number two, under staff may not do any of these things," it says, "The state may not even consider the social security funds when it decides whether a patient owes money for costs of care." This means that if a patient has only social security money, he or she does not owe any money to the State for the costs of care.

We come here today because my clients were aware of that. They were notified on the Notice of Finding of Responsibility that the State may not seize their social security money, but they're also notified at the patient accounting office that if their only funds which are Social Security -- which is the case of both my clients -- there is no debt, they are

told. The problem arises in that the State claims that this prohibition based in Federal law does not apply when the State is the representative payee for the social security funds. My clients receive a notice and finding, and they are told you are being billed "X" number of dollars per day, which ends up being all of their social security minus ten dollars a week. They come to me and they say, "What about all these notices?" And I have then pursued through the appellate process, the administrative appeals process and to here their complaints that this should not be the case.

We're asking the Court today to correct this unevenness. We ask that the costs of care be set for my two plaintiffs at zero. There are four legal reasons why the Court should do this. The first reason, as I alluded to with my scenario, is equal protection of the laws. Equal protection. The simple statement of equal protection is that similarly-situated persons should be treated alike under the law. Here, we have two classes of patients at Western State Hospital, one with a family member payee and one with the hospital as payee: One incurs a debt for all of his money when he's in the hospital; one the State cannot impose a debt. This is an unequal and unfair situation. It has no reasonable basis for its existence.

Another way to look at the complication of this from an equal protection point of view is that, apparently, the State would assert that, based on who receives the social security checks, Federal law is interpreted differently. My clients and I disagree. We believe that the Federal law is clear. We believe that *Brinkman vs. Rahm*, Western State Hospital

versus the petitioners and patients, establish a clear statement of what the Federal law means when it exempts funds from costs of care. Equal protection is one prong that the Court should find that the State's actions are wrong.

The second legal reason of four why the State should be prohibited from imposing a debt that is calculated against social security funds, is the doctrine of preemption. Federal law preempts State law where an actual conflict exists between the State and Federal law. The supremacy clause of the United States Constitution grants that power to the Federal law.

No one, as far as I can tell, across the nation in the case law dealing with this issue has dealt directly with the question of the word "levy." Certainly, in the Social Security Act, subsection 407(a), which is, of course, the major bone of contention here, the issue we are dealing with, it's a general prohibition against what any assignment -- actually, the Court has read it -- "The right of any person to any future payment under this subchapter shall not be a transferable assignment at law or in equity, and none of the monies paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment or other legal process to the operation of any bankruptcy or any insolvency law."

Now, to me, in simple form, that means that the Federal government, when they granted these disability funds as a minimum income level for persons, they wanted them to get -- they didn't want anybody else to get them. "Levy", as I said, has not

been the subject of legal argument, as far as I can tell, but "levy" is there in the statute. "Levy" also appears in our state statutes. The Notice and Finding of Responsibility, of the document which my clients are served with, defines itself in the WAC 275-16-065(7) and (8). The end product of the notice is the adjusted charges. The definitional Section of 275-16-015(1) defines the adjusted charges as those charges levied on a patient. Our own statute uses the word "levied". Charges are levied by a levy. The notice and finding is a levy. Federal law prohibits a levy.

I can find no clearer statement that Federal law is in direct conflict with State law. It has been argued at several of the administrative hearings that a levy doesn't mean a levy. I have both Black's and Webster's here, and the first verb -- verbal meaning of "levy" is to assess. In both dictionaries, "To assess, to count, to place forward as a bill." There are other definitions, execute, exact, seizure, which the state has tried to use, but none of those definitions -- well, let me say none of them. They're accurate, but the State attempts to ignore the first definition is exactly an assessment.

Exactly what the NFR does, it says, you have this much Federal social security money, and we want it. We're going to get it. That assessment is prohibited by subsection 407. A levy is prohibited. The State levies. There's a conflict in the law, and I believe that that should preempt the State from issuing a notice and finding to patients where their sole income is Federal social security disability money.

I might insert here that in the *Brinkman vs. Rahm* case, the injunction which was issued by the district court and affirmed by the 9th Circuit Court of Appeals included the language that the relief was to enjoin the defendants and their successors from counting the plaintiff's social security funds as an available asset.

THE COURT: What do you do with the argument of the State, if I understand it correctly, that the hospital payee patients are not within that class?

MR. FOX: Your Honor, they are not within that class. They were not included. Does that mean that Federal law is different for them because they're not in that class? The State has continually said that law doesn't apply to these patients. That law only applies – this injunction only applies to this appeal. You know, but for that law, we'd be sending these guys a bill, too. But that isn't what the Federal statute contemplates. The Federal statute contemplates that this money reach the disabled person, be put away for his rent and his furniture.

THE COURT: So your position is *Brinkman* stands for the proposition you can't touch the SSA proceeds; they're not calculable in the estate that can be reached?

MR. FOX: Correct. I would quote from Judge Heller's original decision in *Dillon*, on page seven, number ten: "While it is clear the injunction imposed against the Department of Social and Health Services in *Brinkman* does not directly apply to this proceeding, that does not mean that the Court's interpretation of the Federal statute is

irrelevant." "The Court," meaning the Brinkman court, relying on the United States Supreme Court decision in *Bennett vs. Arkansas*, "held that the Federal statute preempts the Washington collection procedures. And collection procedures is a broad term."

Then he goes on in subsection 11, "From a fair reading of *Brinkman* and *Bennett*, it's clear the Department must consider OASDI benefits or the" --

THE COURT: Where are you reading from?

MR. FOX: Are you on Judge Heller's decision?

THE COURT: Yes.

MR. FOX: Page seven, and then I jumped to page eight, number 11.

(Pause.)

THE COURT: Okay. I have it now. You want page seven and what other page?

MR. FOX: I went to page eight, subsection 11, basically his finding on number 11.

THE COURT: Okay. Thank you.

MR. FOX: All right. Thank you, Your Honor. I think the State's contention is that somehow my clients are specifically excluded from the *Brinkman* ruling, and I think that's a reversal of the proper thought process. I think what happened is they were not included in the plaintiff class. And I don't believe and I would argue to you that that does not mean that the Federal law does not apply as equally to them as anyone else, merely because the injunction may not apply directly to them. But,

nonetheless, does Federal law change because they were not included in a plaintiff class? I would say no, and I would ask the Court to say no. The Federal laws are designed to keep those benefits going to the disabled person.

I've argued that equal protection requires that persons be treated equally. I've argued that Federal law preempts the state law.

The third prong of our argument is the State's own accounting procedures. If they follow the rather intricate system set up in WAC 275-16, that they are to subject assets to a test to see if they are available, they are told to look at all the resources available to any particular patient, and then -- and I'm stating this simply: They're told to exclude any resource which is considered exempt by Federal law. The question then arises: Does subsection 407(a) of the Social Security Act exempt funds -- clearly, it exempts funds from collection and levy and legal process and attachment.

If they are exempt, then the Department in their collection laws -- and I don't know if the Court – it confused me for a long time, but 275-16 refers to WAC 511 -- sorry. 588 -- I'm sorry, Your Honor. 38-511-1160 is the list of exemptions it considers, burial plots, and I think homesteads and spousal maintenance agreements. It's something the Department must subject monies to to see if they can collect them. In that statute is the prohibition against those -- considered exempt from Federal funds.

The last collection -- or the last revision of that law says Federal funds are not counted. Federally-

exempt funds are not counted. And that, unfortunately, is changed to a number of 388-470. I hope I'm not confusing Your Honor with all these WAC's. If the State followed its accounting procedures, they would exempt federally-protected funds, and the accountability of my clients would be zero. I would suggest that the Attorney General of the State of Washington and the Plaintiffs in *Brinkman vs. Rahm* did that work for us. They looked at the accounting procedures of the state and their injunction, which the 9th Circuit said was to enforce the law as it should be enforced the way it was understood at the time. The defendants and their successors are enjoined from accounting the plaintiffs' social security funds as an available asset in computing their liability. That injunction to the plaintiffs in *Brinkman* is a statement of what I believe the law should be for any patient at Western State who had solely social security funds as his income.

The final argument I would make to the Court today is that the State places itself in an extremely awkward position by becoming payee for my clients. As my brief notes, we do not disagree that they can become payee, an institution where a person resides as a potential payee, nor do we dispute that a payee can pay for custodial care of his beneficiary. I think those two statutes are considered separately, however, and when the State wears both hats, of acting in the best interests of beneficiary and yet pays itself, it's breaching a fiduciary duty to the beneficiary without that beneficiary's consent. Obviously, they do not consent because they have appealed the State's decision here today. They've

said, "We don't want the State to act in our best behalf by paying themselves."

Further, as a fiduciary for the beneficiary, the State would seem hard-pressed to know that a payee of protected funds can conserve all those funds for its beneficiary, for the ward, if it's not the State, and yet, the State turns around and pays itself. They know that if they were not the State, they could hang onto the $3,000 to get you an apartment. Instead, they turn around and pay themselves for hospital care. I think that is a breach of the fiduciary duty, and I think they put themselves in an awkward and unfair situation with respect to my clients.

I tried to give the Court four legal reasons why this unfair situation should be changed. I'm prepared to answer questions. And I'm sorry I'm not clearer on all the statutes and the WAC's involved, but we would ask you to correct this unfair situation today.

THE COURT: I'll give you an opportunity for rebuttal, if you wish. Ms. Casparian.

MS. CASPARIAN: Yes. Thank you, Your Honor. My name is Deborah Casparian. I represent the Department of Social and Health Services. The Department's requesting that this Court affirm the review decisions for both the petitioners. Petitioners argue that this case is similar to *Brinkman*, or *Brinkman* should rule the case here. This case is not *Brinkman vs. Rahm*, and that case does not control here. If the petitioners think that the injunction in that case should apply in a broader situation, they should bring a motion to the Court overseeing that injunction. They haven't done so. The Department

certainly is not arguing that the Federal law 42 USC Section 407 applies differently to those patients for whom the Department services representative payee and for whom those patients the Department or Western State does not serve as representative payee. Certainly, the Department's not arguing that Federal law applies differently. What the Department is arguing is that Federal law does not preempt state law. It allows the Department, Western State Hospital, specifically to serve as representative payee and use the monies towards costs of care.

There are two issues before the Court today: Specifically, whether petitioners have met their burden of proving that Federal law preempts state law; and, secondly, whether or not Western State Hospital's actions as representative payee violate the petitioner's equal protections rights. First, the petitioners haven't proven that Federal law preempts state law. There is a strong presumption against preemption. They have not met it. They haven't shown there's an actual conflict between State law and Federal law. They haven't shown that Congress clearly intended to preempt State law, nor have they shown that Congress has occupied the field such that Federal law is implied to preempt State law.

Certainly, when looking at a preemption argument and trying to interpret Federal law, this Court should give deference to the interpretation of the agency charged with administering that Federal law. The Social Security Administration is charged with administering the representative payee program, certainly granting the benefits to these

individuals. Their interpretation of the Federal law and their regulations should be given deference. State law, which obligates a patient to pay for his or her care and state law which allows the Western State Hospital to use a patient's social security monies when it serves as representative payee towards costs of care doesn't violate Federal law.

The petitioners concede that -- let me back up. The petitioners collapse the analysis by arguing that when Western State serves as representative payee and also has custody of a patient, that violates Federal law. But that collapses the analysis, and we need to take it point by point.

First, Western State Hospital, the State, is authorized or permitted to apply to the Social Security Administration to serve as representative payee. As I said, petitioners concede that point. Certainly, Federal law and the regulations allow that. Second, a representative payee, as petitioners concede, is authorized to use social security funds for the benefit of the beneficiary. Specifically, in the regulations, a representative payee is authorized to use the benefits to pay for the customary charges at a state institution. The Social Security Administration has contemplated representative payees, whether or not they're going to be a private, individual or state and then has contemplated what a representative payee, including the State, may do with the social security funds.

Therefore, the Department's actions -- the Western State Hospital's actions as representative payee to use partial social security funds towards cost of care is in full compliance with Federal law.

THE COURT: Let me get to a point that's been made and I've contemplated on since I read the materials. Do you agree that *Brinkman* says that if you're a patient that either is your own payee or is represented by a private non-government payee, that SSA funds are beyond reach, they're not calculated as part of the patient's estate which can be required to be used to pay costs of care? Does *Brinkman* say that or doesn't it?

MS. CASPARIAN: It says something similar, Your Honor. The *Brinkman* court found that Western State Hospital, when it was not serving as representative payee, actually went into a patient's bank account and seized the money. That violated 407. That's what *Brinkman* says. It did not say that -- in fact, the *Brinkman* court said that there are certain procedures that this Court certainly can't contemplate that may not violate 407. *Brinkman* was only limited when a state was not serving as representative payee and limited to those facts when Western State Hospital was reaching into a patient's account. And, certainly, the injunction that came from that case on the bottom of page one specifically contemplates that that case was only where the State did not serve as representative payee. It says patients for whose social security income, the defendants, are representative payee, where Western State Hospital is representative payee, have not been included in the plaintiff class. Accordingly, the defendant's use of their payee powers to the social security income for cost of care collections is not before the court and is not governed by the order.

The Department's position is --

THE COURT: Well, I'm not through with that yet. You cited the injunction, the actual injunction. I was looking at the order. What do you contend paragraph two of the order means, "defendants are enjoined from counting plaintiff class members' social security as an available asset"?

MS. CASPARIAN: Your Honor, where are you looking?

THE COURT: I'm looking at page two of the agreed order concerning the enforcement.

MS. CASPARIAN: Yes, Your Honor. This injunction is specifically limited where the Department is not serving as representative payee. It says here that the Department is enjoined from counting plaintiff class members' social security funds. This is only where the State did not serve as representative payee, and that's an important distinction.

THE COURT: Well, what I'm trying to do is understand how the social security funds for a patient who has a private payee are considered unavailable in computing their liability, how the character of the funds differ if they are being paid to a state representative payee or hospital. Help me understand that.

MS. CASPARIAN: The character of the social security funds do not change when the State is representative payee or when the State is not representative payee. The 9th Circuit found when State was not representative payee and was reaching into the patient's funds, that violated 407. This injunction, which was --

THE COURT: Why did it violate 407? Because the funds are not an available asset in computing their liability?

MS. CASPARIAN: No. The 9th Circuit found that when the State did not serve as representative payee and took the money anyway with no authority over the funds, when they actively went into the bank accounts, that violated 407. The 9th Circuit did not find that Federal income, social security benefits, were exempt from ever being counted. That's not what *Brinkman* stands for. There's no case that stands for that proposition.

The plaintiffs have cited two cases such as *Bennett vs. Arkansas*, whieh is a U.S. Supreme Court decision and *Philpott*, which is another U.S. Supreme Court decision. None of those cases have held that the State can't use monies to pay for costs of cases – or use social security monies to pay for costs of care. Those cases are when the State is not serving as representative payee. The State took the money, anyway.

In *Bennett vs. Arkansas*, the State sued an individual to get his social security monies. The Court found that's legal process. That violates 407. That's seizure. The State wasn't acting as representative payee, had no authority over the funds, but sued. That violated 407. Similarly, in *Philpott*, the State brought suit in that case to attach another individual's social security funds. That, again, was legal process. None of those cases stand for the proposition that a State serving as representative payee cannot use the monies towards costs of care.

THE COURT: Let me give you an example: Let's say I'm a patient at Western State Hospital and I get $500 a month social security, and Earlene here is my representative payee. And she gets money on my behalf and decides that she's going to invest it in Solomon Smith Barney. Can't go after it, can you?

MS. CASPARIAN: The Department is prohibited from going after a representative payee to seize the social security funds, and, certainly, when the Department is complying with the injunction, the agreed order concerning enforcement in *Brinkman vs. Rahm*, the Department, Western State Hospital, can't even issue -- the Department cannot issue a Notice of Finding of Responsibility to the representative payee. That's because they're complying with the injunction.

THE COURT: Okay. But if instead of Earlene being my representative payee, for whatever reason, I can't have anybody come forward to be my representative payee, then my representative payee can make the decision to be fiscally responsible on my behalf and pay my current costs of care, my current maintenance, because, under State regulations, that's allowed, and according to your argument, that's also contemplated and allowed by the Federal regulation. Is that right?

MS. CASPARIAN: Yes, the Social Security Administration does permit it. Petitioners have sort of mischaracterized the situation. Western State Hospital is designated as a patient representative payee. It's the Office of Financial Recovery which seeks payment for their costs of care. What happens is, OFR will establish a patient's liability, will issue a

Notice of Finding and Responsibility, or NFR, and send them that to Western State Hospital. And in the record, it's shown that Western State Hospital then has a decision whether or not they want to pay the money to the Office of the Financial Recovery. Western State Hospital is clearly complying with the social security regulations which have already contemplated this situation where a State can be representative payee and its representative payee can specifically use the benefits to pay for customary charges at a state institution.

Petitioners have argued this violates their equal protection rights. but it does not.

THE COURT: Okay. I'm interested in how it doesn't. Tell me.

MS. CASPARIAN: To establish an equal protection violation, this -- let me back up. There is no suspect class here, and, as petitioners concede, it's a rational basis test. A rational basis test is very easy to me, and all the Department would need to show is that the legislation applies alike to all members. There are reasonable grounds to distinguish.

THE COURT: Does it apply alike to all members who receive is SSA?

MS. CASPARIAN: It applies to all like members for whom the Department serves as representative payee. The Department is --

THE COURT: There's no question about people who have the Department as representative payees are going to be paying for their current care. I mean, there's no disparity in that class. But how

do you distinguish the entire class. and that is people who get SSA benefits.

MS. CASPARIAN: The way the Department distinguishes from that is because they're complying with this injunction where Legal Services specifically contemplated with the Attorney General's Office that this case did not concern those situations where the Department served as representative payee.

THE COURT: Okay. Help me, then, understand the Federal cases, which I don't have quick access to as perhaps you do in the time I've had to prepare. The Federal cases say that SSA are -- well, they say that SSA funds cannot be forcibly obtained by levy, attachment, execution or any other legal process.

MS. CASPARIAN: That's correct. Because of 407, the State or private individual couldn't sue someone to get their social security money. They couldn't just take it, and certainly that's what *Bennett vs. Arkansas* and *Philpott* and *Brinkman* all contemplate. In *Bennett vs. Arkansas*, the State was not the representative payee, but the State seized a prisoner's social security benefits. They thought that they were entitled to it. They weren't the representative payee. They seized the patient's funds and filed suit against the prisoner. The Supreme Court said, clearly, that violates 407.

THE COURT: The key in those Federal cases, the rationale was that not the funds were exempt, but that the funds could not be forcibly attached.

MS. CASPARIAN: Exactly.

THE COURT: Or, for want of a better word, forcibly obtained through attachment, levy, execution or any other --

MS. CASPARIAN: Exactly, Your Honor. That's what this case is about, and that's what these cases -- it's the difference between creating an obligation and being able to enforce the *Fetterusso* court and *Kriegbaum* court. Both contemplated the situation and specifically said that the difference is 407 doesn't eliminate the underlying debt but precluded states from using legal process to enforce the obligation.

THE COURT: All right. So next question: Is there any Federal court that has considered the equal protection argument being made here?

MS. CASPARIAN: Not to my knowledge, Your Honor. And, certainly, the rational basis review is an easy test to meet. It's a heavy burden for the petitioners to be able to meet and distinguish them between all SSA patients, as Your Honor asked about. The Department is distinguishing among those because of the injunction. That's rationally related to their actions, or their actions are rationally related to the injunction they're complying with. Petitioners haven't met their burden of meeting that rational relationship test.

THE COURT: Well, excuse me for interrupting you, but what do you do with the argument it may be rationally related to a legal distinction made by a court but it's not rationally related to any factual distinction between the two classes of SSA recipients, other than one has a private representative payee who can say, "Tough,"

and the other has a representative payee who apparently considers it in the best interests of the actual payee to pay their current costs of care as it is due?

MS. CASPARIAN: That's an important distinction where the State is serving as payee and where there's a private representative payee. Just because a patient has a private representative payee doesn't necessarily mean that private representative payee doesn't have an obligation to pay for their care, pay for the patient care. The injunction certainly prohibits the Department from letting anybody know that, and the Department is complying with that. But that is an important distinction when the Department is serving as representative payee from the Social Security Administration. It gives authority over the patient's social security funds, and, certainly, they can't do that when they're complying with the injunction to even send a bill or Notice of Finding of Responsibility to a private representative payee.

THE COURT: So is there any notice given to involuntarily-committed patients who receive SSA funds, that they have a right to appeal the SSA, Social Security Administration's, designation of Western State Hospital as protective payee or --

MS. CASPARIAN: Yes, Your Honor. There --

THE COURT: -- representative payee?

MS. CASPARIAN: When the Social Security Administration intends to designate a representative payee, in this situation, Western State Hospital, it will send notice to the patient and his or her legal

representative notifying them that the Western State Hospital is going to be designated as representative payee, and if they want to object to that, they certainly have a right to do so and a right to a hearing, and there's no evidence in the record that these --

THE COURT: Does the notice advise them what the results are with respect to their enforcement liability of those funds?

MS. CASPARIAN: There's no notice in the record here before us. But what I -- and there's no evidence that the petitioners ever objected to the Department of serving as representative payee. But to answer your question --

THE COURT: Well, let's say I'm a patient, and I'm told, "If you let Social Security Administration designate the hospital as your protective payee, the costs of your current care will be deducted from your payment, but if you have somebody other than the hospital payee, nobody can force that." How many do you think would elect to have Western State be the protective or representative payee?

MS. CASPARIAN: I certainly can't guess to that. It's my understanding a notice being that specific has not been sent out.

THE COURT: Sure.

MS. CASPARIAN: But, like I said, the Department was notified the Department is serving as representative payee. The social security benefits here in question entitled to, the purpose is for them to be used for their current care and maintenance.

That's what the Social Security Administration has contemplated in their regulations that allow Western State Hospital to serve as representative payee and use it for costs of care.

I understand this Court's confusion or issue concerning that difference, but the distinction is important to make where the State is serving as a patient's representative payee and is complying with Federal law and the regulations. The Social Security Administration has allowed what the Department is doing with the patient's social security funds.

THE COURT: Then what do you with the argument that, assuming the Social Security Administration's laws which allow federally -- following your argument -- government payees to use that money for costs of care and the Washington regulations which dovetail with that arguably and allow it to use it, has the ultimate result of -- ultimate unequal result on recipients of SSA who don't have government payees, by exempting from collection or forced collection, for want of going through all that litany in the ways in which you can get it, for costs of current care when the government's providing it? Doesn't that set up an unequal treatment?

MS. CASPARIAN: No, Your Honor, it does not. The patients by law are obligated to pay for their costs of care at Western State Hospital. And our legislature has contemplated that the State can use social security funds. Petitioners have argued that social security funds are exempt from being counted because of a WAC, and that is an incorrect interpretation of that WAC. Social security funds

can be counted in this situation where the State is serving as representative payee. There may be the appearance of an unequal treatment or a distinction in the end, but it's important how we get to that end. There may be a distinction, but there's no equal protection violation.

The reason why the Department treats these two people -- classes differently is because of the injunction, and their actions are rationally related to the injunction, and they're in compliance with the Federal law of allowing a representative payee to use the cost benefits towards costs of care and, again, 407.

THE COURT: Excuse me. Excuse me. The reason they're being treated differently is because a court, for whatever reason, has interpreted laws with respect to a private payee class of recipients in a way that suggests that there can't be forced collection of their costs of care from those funds. Doesn't it -- isn't that what *Brinkman* is doing?

MS. CASPARIAN: *Brinkman* where the State is not representative payee certainly went into a patient's bank account and took the money.

THE COURT: Says you can't enforce the debt --

MS. CASPARIAN: Right.

THE COURT: -- against SSA funds.

MS. CASPARIAN: Correct.

THE COURT: However, we don't even pass upon the issue, and, given your argument, if they listen to your argument is that the way the Federal -- the juxtaposition between the Federal regs and the

State regs work when the government's protective payee allows, in essence, collection of the cost of care debt from SSA funds that can't be collected from private payee patients? Every court that you've cited to me, Federal court, says, "No can do, can't get it." The private payee can say, "Go fish. You can't get it. Go over any of my other assets which probably can be dumped out of a thimble, but you can't go after SSA because 407 is real clear, it's not subject to compulsory, if you will, or forced collection."

MS. CASPARIAN: Your interpretation of 407 is correct, and, certainly, that's what the Federal cases have found. 407 prevents a state from suing any representative payee, prevents a private individual from suing a payee, from actively seizing their money. That's not what's happening here. The case that's on point, that's similar to what we have here, is out of Alaska, CGS allows -- a state representing a certified payee allows for costs of care. That's the case that's similar. All the other cases we've pointed to is distinguishable from this case.

THE COURT: But the *Alaska* case did not confront the issue of equal protection.

MS. CASPARIAN: Not to my knowledge, Your Honor.

THE COURT: To me, that's what this whole case boils down, if my discussion is starting to telegraph where my inclination is after reading the materials before you started arguing, that the Federal preemption argument and the interpretation of the Federal regs and the State regs is they go together in terms of allowing this process. I think it's allowed. But that's different than saying

whether or not it results in unequal treatment. And, in effect, that's the rational basis in terms of why the Department here is doing what it's doing in light of *Brinkman*, doesn't -- only goes so far. It begs the issue of whether or not the Federal statute and regulations as applied in concert with or in addition to application of the state regulations results in unequal treatment of individuals occupying this class. We call SSA recipients who are receiving government benefits because they're committed to a government institution involuntarily, I guess – I don't know if the rest of these cases involve involuntary commits versus some other kind of commits -- but who are being in some way provided services by the government for their costs of care, provided care by the government and then responsible for its costs.

In effect, to my way of thinking, when one person can dodge because of Section 407 collection and the other person can't because of the way in which all the regs are set up, Federal and state, doesn't that work an unequal treatment?

MS. CASPARIAN: But it doesn't violate a rational basis test. That's a heavy burden for the petitioners to meet.

Your Honor, if I may conclude, if the petitioners believe that this injunction should apply to them or patients like them, the appropriate course for them is to go make a motion to the court overseeing the injunction to broaden that injunction. And as I said before, this -- Social Security Administration contemplates this. The Federal law allows it. There's no equal protection violation in the

end because a rational basis test is very easy to meet, the petitioner having met their heavy burden of equal protection violation.

THE COURT: Mr. Fox, anything you want to talk about in rebuttal?

MR. FOX: Your Honor, I think you see my client's claim. I suppose what I would point out, just in response of the State's argument, I would go to, again, Judge Heller's decision where in the actual administrative hearing process on tape, on page eight, he says in this case, "However, the OFR, Office of Financial Recovery, confirmed that OFR expected the superintendent of Western State Hospital to forward the identified funds directly to OFR without further legal process." It's a way of getting my client's money.

Secondly, I would only clarify that the *Brinkman* court goes far beyond an injunction, that the 9th Circuit decided nothing. They affirmed the district court judge's ruling, and his ruling was that he granted the appellee's motion for summary judgment. The Court held that section 407 barred the State from seeking reimbursement from the appellee's OSDAI funds which the State's practice of withdrawing funds from patients' accounts without notice deprived them of their property without due process of law. In order to correct that, they instituted the injunction which then sets up --

THE COURT: The 9th Circuit in which case?

MR. FOX: The 9th circuit affirmed the Federal district court.

THE COURT: In *Brinkman*?

MR. FOX: In *Brinkman*.

THE COURT: Okay.

MR. FOX: And that's all I would have to add, Your Honor.

THE COURT: The arguments have been excellent, and the briefing has been very well set forth. I believe the issues are complicated, and, at first blush for a general jurisdiction court, all the different regs and WAC's get a little bit confusing in terms of their nomenclature and their definitions. But I think I have the benefit of where each of the parties are going and what their positions are with respect to what I believe are the two basic issues presented by this petition for judicial review.

In reviewing the decision of an administrative agency, this Court's review is governed by the Washington State Administrative Procedures Act. The grounds for overturning an agency decision are set forth in such act in alternative fashion in RCW 34.05.570(3): The court shall grant relief from the agency order only if the court determines that, (a), the order or the statute or rule on which the order is based is in violation of constitutional provisions on its face or as applied, or, (d), the agency has erroneously interpreted or applied the law. Those are the two of a number of alternative bases which the Court can examine and on which the Court can grant relief. There are no issues of fact that require review of the record to determine whether any factual findings are supported by substantial evidence.

The issues involved here present questions of law to which the Court applies the error of law standard. Under the error of law standard, the Court is allowed to substitute its judgment for the administrative agency's, even though substantial weight is to be accorded to the agency's interpretation of the law.

With respect to the petitioner's argument regarding Federal preemption, both Federal and even the State's own collection regulations would not permit the SSA funds received by a patient to be included in the estate which would be liable for the patient's costs of care.

I conclude the Department has not committed error of law by holding that its administrative regulations, are not preempted in this regard by Federal law or regulations. But unfortunately for the Department, that does not end the inquiry, because my next consideration is whether or not the statute or rule on which the order is based are in violation of constitutional provision on their face. Section 407 and the State and Federal regs on their face, I don't believe establish a violation of the constitutional right of equal protection of the law.

To me, the critical question presented is whether or not the scenario described here, and in the argument of petitioner, establishes that the application of the Federal and State statutes and regulations violates constitutional equal protection of the law. The Department argues that it does not because there is a rational basis and the legislation or application of the rules applies alike to all individuals within the class. That is, argues the

Department, those SSA recipients who have the hospital or government designated as their representative payee are all treated the same. The Department argues further that reasonable grounds exist for distinguishing between those within and those without the class, i.e., those who receive SSA who have private representative payees and those who receive SSA who have government representative payees.

As I understand the State's argument, there is a rational basis for allowing the latter class to be treated differently because, in the State's view, those SSA benefits can be used to pay costs of current maintenance; they just can't be forcibly collected to be used to pay for costs of ongoing maintenance provided by the government. And the rational basis for distinguishing between the classes has to do with the fact that there is a Federal injunction prohibiting the State from treating one class differently than the other. There's a third part of the rational basis test, and that is whether the classification has a relationship to the purpose of the legislation. The purpose of the legislation protecting SSA benefits from what I call "forced collection" is apparently the policy consideration by Congress that these benefits have been earned for the social security, if you will, or economic security of recipients, based upon earnings and wages over the years essentially as an insurance policy to maintain their minimum levels of economic status in the event of old age or disability and, thus, ought not to be subject to attachment, levy, execution or any other forced collection process, even though a debt may be validly owed by the recipient thereof.

In the case law cited, the Federal regulations and State regulations that arguably permit that purpose to be undermined by a process that has apparently survived scrutiny in terms of its validity have not apparently been subjected to the equal protection analysis. And in my application of an equal protection analysis, I can't find a rational basis for allowing private payee recipients of SSA not to have their money spent without their consent on the costs of their current care but requiring government payee patients to have the costs of the current care deducted from their benefit payments.

I'm further bothered by the fiduciary argument. There have been many times when this Court in guardianship or other proceedings relating to persons who are incompetent, either by virtue of minority or virtue of not being able to care for their own affairs, appoints a Guardian ad Litem, and the Guardian ad Litem makes a number of decisions on behalf of the ward that involve financial considerations and basically protecting, prioritizing and allocating assets according to what the Guardian ad Litem deems is in the best interests of the ward. I don't know if the State's doing this here. The State appears to be considering its need for reimbursement for costs of care, which is a very definite, legitimate need, given considerations and costs of government, as a priority over and above other considerations that could be appropriate for the ward. That's a little bit bothersome. But by the same token, I don't wish to be interpreted as critical of the State in that regard because I understand the State is providing care and is authorized to assess financial responsibility for the care and is certainly, as a

trustee of the public treasury, authorized to pursue payment. Under one scheme, it can't or doesn't collect from private payee recipients of SSA, and then on the other, it's found a way to do that, which, to me, results in unequal treatment of private payee recipients simply by virtue of the fact that one representative payee may not be a government department or institution and the other is, and yet the government is still providing services to both. I don't think a rational basis has been shown for treating the two different in light of the purpose of the legislation, that is, to exempt SSA benefits from forced collection for legitimate debts, one which can be government-provided care.

Accordingly, I'm persuaded that on that challenge, petitioners prevail and that it's a violation of equal protection to allow the Department's collection process to stand. And, to me, the Department's remedy is for Congress to amend its statute or Section 407, perhaps, to allow such benefits to be made available for forced collection when the debt arises from costs of care to a recipient provided by a government. But that's another issue.

Accordingly, for that reason, the order of the Department will be reversed, and I'll enter an order precluding the Department, for those reasons, from paying over SSA funds it receives as representative payee on behalf of the recipient literally to itself in whatever amount determined to be owed by the recipient for his/her costs of care.

Interesting issue. I think this will put squarely now before some appellate court not only those other arguments but the equal protection

argument. Any questions by either counsel? I'll sign an order upon presentation. We'll be in recess.

SUPERIOR COURT OF WASHINGTON
OKANOGAN COUNTY

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, GUARDIAN, AND OTHER PERSONS SIMILARLY SITUATED, and DANNY KEFFELER, an individual. Plaintiffs, vs. STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES and DEPARTMENT OF LICENSING, Defendant. And LYLE QUASIM, Director of the Department of Social and Health Services, and MICHAEL R. HOBBS, Program Manager for Social Security Income Department and Social and Health Services Department of Children and Family Services, Additional Defendants.	No. 96-2-00157-2 SUPREME COURT NO: 18157-0-III PLAINTIFFS' BRIEF IN SUPPORT OF PROPOSED FINDINGS RE: FEDERAL BENEFITS

The Plaintiff's Insert Re: Federal Funding

The Defendant was required by the Court's Scheduling Order, to identify all federal programs, by U.S.C. title and section number.

2. Placement with DSHS;

3. In a properly licensed facility;

4. Where the child is deprived of parental support and care;

5. **Where the child remains in financial need;**

6. "The child must not be in receipt of SSI payments, and in limited instances, AFDC payments, while in **receipt** of IV-E funds";

7. Under age 18;

8. Placed via a voluntary placement order or a court order in effect for 180 days. (Emphasis my own.)

For SSA children, financial need is a factor.

At page 23, under the heading "Child in Foster Care Who Has Income-How it is Handled", we are told:

"1. If the child's gross income is 185% of the child's cost of care, the child is not IV-E reimbursable so long as the income remains about this limit.

2. All unearned income/ benefits available to the child must be counted against the **child's cost of care** on a dollar for dollar basis. In those instances, where the unearned income matches or exceeds the

child's maintenance cost of care, the child is not IV-E eligible. (My own emphasis)

SSA benefits, but not SSI benefits, are counted as unearned income.

In plain language, the State receives repayment for foster care expenses from Title IV-E when the expenses exceed the child's SSA in a given month.

see Blimka, case No. 4; Clark Casey, Case No. 9; Jennifer Philbeck, Case No. 15; Rachel Hernandez, Case No. 21; Christopher Milkins, Case No. 34; and for an example of revisiting which overpays the State see Nar. Sum. #2 for Jonathan Cathey, TANF-SSI; Latasha Enochs, and Kyle Hontz, SSI, Title IV-E, Voluntary.

Repayment of the State's foster care expense from Title IV-E funds diminishes the State's claim that its failure to account to the Trust Fund Unit for child support is unlikey to result in an overpayment. The State claims:

1. It's foster care expenses always exceed the Social Security reimbursement, making the risk of an overpayment remote; and

2. It's Totals v. Totals Analysis reduces the risk of overpayment.

In both situations:

Overpayment = (Foster care expense paid from parental support) + (foster care paid from Social security) – (State's foster care expense).

But when the Federal Government Public Assistance component is included:

Overpayment = (parental support + Social security) – (State's foster care expenses) – (Federal reimbursement).

The random accounts demonstrate that Social Security is regularly used to repay foster care expenses already paid from.

The State did not produce TANF eligibility standards in supplemental discovery but produced the State's Policy Manual which states:

The Children's Administration will not **concurrently receive** TANF/ CEAP and SSI or Social Security Title II SA for children in foster care. (Def. Res. No. 8, Policy Manual, p.244)

The 48 random accounts show the State's practice to be inconsistent with the aforesaid policy, See Nar. Sum. #2 where TANF benefits were claimed concurrently with SSI benefits Jonathan Cathey abd Jamine Saetern; and TANF benefits concurrent with SSA benefits Dustin King and John Hartell. In Seatern, the State took Social Security to pay for expenses already paid by TANF.

Federal benefits are claimed for SSI children during the eligibility determination period.

Both SSA and SSI children qualify for title IV-E and TANF funding during the eligibility period. Their eligibility for Federal Public Assistance benefits is the same as for all other foster children until they receive the benefit. Receipt of SSI does not diminish the child's eligibility to receive the Federal Public Assistance because SSI is not

considered as income by the Title IV-E eligibility manual.

While receipt of SSI does not diminish Title IV-E or TANF Federal Public Assistance receivable, receipt of Title IV-E or TANF reimbursed from the children's subsidiary account, and that the failure of the State to account, for child support is aggravated by the State's receipt of federal benefits.

March 31, 2000.

REINBOLD & GARDNER

//s// [Rodney Reinbold]

RODNEY REINBOLD, WSBA #4656
Co- Counsel for Plaintiffs

Analysis of SOF funding, attached. The SOF codes and amounts were segregated for each child and totaled.

This narrative summarizes and compares the data entered between 1997-1999 for each of the three 48 random sample reports to determine whether and to what degree the State reimburses foster care expenses already reimbursed from federal funding sources and child support.

Jamie Brundage

SOF Q – State – SSI	$5,148
SOF 5 – State only	$6,929

SSI onset 7/2/96 @ $476/month

Comments:

SOF Q is clearly different from State Only funding, SOF 5. It is used only in SSI cases. It is referenced twice in the exhibits. It is listed as a funding choice in the benefits code manual Def. Res #9. It is mentioned in one paragraph in the State Policy Manual, Req. 8, p. 240. The worker is told to change the funding code for Title IV-E to Q before making the application for SSI benefits. Reporting Title IV-E under SOF 2 or 4 creates a qualification issue. Use of Q for federal funding in pre-application cases signifies an intent to abandon or to reduce the benefits after approval.

The Q designation usually continues after the SSI benefit is received, signifying that care and expertise are needed to manipulate the mix of Federal, SOF Q v. State SOF 5 benefits to optimize the child's federal revenue.

This care shows that both SOF Q and SOF 5 expenses are reimbursed from the child's social security benefits. SOF Q was used before and after the child received SSI. In Jamie's case, the funding alternates between SOF Q and SOF 5 during the entire period following receipt of SSI.

Calcagno, Rene

SOF 5, State,	$5,195
SOF Q SSI- State	$4,682
SOF 2, Title IV E	$125,129

SSI onset 8/11/93, at about $450/month.

Comments:

Reimbursable expenses were always above $3,500/ month. Service codes indicate a severe emotional disorder. Rene's case shows the State to be in receipt of Title IV-E while at the same time receiving SSI benefits. Erickson's Affidavit is thus clarified to mean that title IV-E funding can cause a reduction in a child's SSI but the child is not disqualified.

Enochs, Latasha

SOF 5 State only	$1,727.76
SOF Q State SSI	$ 4, 630.56

SSI onset 5/1/95 at $486.

Child support received: No. Def. Res 10

Comments:

The State paid itself $7,714.60 between 1997 and 1999. During the same period, the State only paid $1, 727.26. With SOF Q funds added $6, 358 of Federal and State Public Assistance was furnished. Latasha received child support, Rhouten Affidavit, p.5. Her account was omitted from Def. Prod. 10. It ought to be produced to rule out a likely overpayment.

Hallett, Anthony

SOF 5-State only	$3,603.30
SOF Q- SSI- State	$9,295.38

SSI onset 12/19/95 at $512/month

Comments:

$11,281.34 was reimbursed to the State between 1997-1999. Only $3,603 was designated SOF 5-State only.

Hartell, Jon

SOF 5 State only:	$4,502.00
SOF 1 TANF:	$1,771.62
SOF 2 Title IV	$6,301.86
Child Support	$ 117.75

SSA onset 9/6/96 at $102 per month.

Comments:

The State claimed and received TANF payments while receiving SSA. This is consistent with Ms. Erickson's deposition, saying that SSA children are eligible for TANF, and experience no benefit reduction due to SSA; but is contrary to the State's Policy Manual, p. 244. "CA will not concurrently receive TAMF/CEAP and SSI or Social Security for children in foster care"

Title IV-E benefits were also claimed while the Sate received the child's SSA. This is in accord with Ms. Erickson's affidavit, where she says no Title IV-E is available for SSA but is reduced by the SSA benefit. Between 1997 and 1998, that State reimbursed itself $1,683 from John's subsidiary account.

This child received support according to the Affidavit of Rhount, p.5, but we don't know how much because her Exhibit #10 documents are

missing from my records. These records should be produced to rule out a likely overpayment.

King, Dustin

SOF 5 State Only	$23,213
SOF 1 TANF	$25,185

SSA onset 2/7/97

Comments:

Dustin received his first TANF benefit on 3/19/97. The two benefits predating the TANF payment in 1997 were both SOF 5. The payment pattern before 1997 is not established because the payments tend to alternate. The record demonstrates that TANF benefits can be used to supplement the State's budget after a child qualifies and receives SSA benefits. This case clearly refutes Lockwood's contention that TANF benefits are, as a matter of policy, not claimed while the child receives SSA benefits. Here $25,185 of benefits were claimed.

Lucas, Zachery

SOF 5 State funded	$6,314.11
SOF 4 Title IV-E Vol.	$ 629.89

SSA started on 5/7/98 in the amount of $333.

Comments:

The State received $1,322 in 1998 and returned $333 of overpayment to Social Security.

Another example of the State claiming Title IV-E while receiving Social Security Title II benefits.

McClennan, Alyssa

SOF Q $9,453

SSI onset 3/31/97

Comments:

All funded in SOF Q. The State reimbursed exactly $9,551 in this time period but spent $9,453.00. If SOF Q is federally funded to any degree, the State was overpaid. We checked the spending and it does not match the cover page.

This page intentionally left blank.

Sheet 1

Child's Name	Service #	SoF 5	SoFO
Brudage, Jamie	3211	$ 366.68	
SSI	3212		$ 141.85
-	2833	$ 293.92	
	2833	$ 253.84	
	3212		$ 141.85
	3211	$ 366.68	
	2833	$ 280.56	
	3211	$ 366.68	
	3212		$ 141.85
	2833	293.92	
	3211	366.68	
	3212		141.85
	3233	$100.13	
	2833	$ 280.56	
	3211	$ 366.68	
	3212		$ 141.85
	2833	$ 280.56	
	3211	$ 366.68	
	3212		$ 141.85
	3219	$ 44.33	
	3211	$ 366.68	
	3212		$ 146.11
	2833	$ 293.92	
	3219	$ 44.33	
	2833	$ 280.56	
	3211	$ 366.68	
	3212		$ 146.11
	3203		$ 18.32
	3203		$ 549.60
	3219	$ 44.33	
	3211	$ 397.74	
	3219	$ 44.33	
	3211	$ 397.74	
	3219	$ 22.16	
	3211		$ 397.74
	3211		$ 397.74

Sheet 1

Date	SS from TF acct
1/15/1997	$ 476.86
2/10/1997	$ 498.68
3/17/1997	$ 491.55
4/2/1997	$ 491.55
5/12/1997	$ 491.55
6/16/1997	$ 491.55
7/15/1995	$ 491.55
8/15/1997	$ 491.55
9/15/1997	$ 491.55
10/15/1997	$ 491.55
11/14/1997	$ 491.55
12/15/1997	$ 442.07
1/15/1998	$ 397.74
2/13/1998	$ 397.74
3/2/1998	$ 22.16
3/13/1998	$ 552.89
4/2/1998	$ 39.00
4/15/1998	$ 397.74
5/15/1998	$ 597.77
6/2/1998	$ 44.33
6/15/1998	$ 397.74
7/2/1998	$ 66.49
7/2/1998	$ 615.63
8/14/1998	$ 267.45
Total	**$ 9,638.24**

Sheet 1

Child's Name	Service #		SoF 5		SoF O
Calcagno, Rene	3456				$4,682.00
SSI	3301		$ 800.00		
	3456				
	3456				
	3456				
	3456				
	3456				
	3456				
	3456				
	3456				
	3457		$3,215.00		
	3457				
	3457				
	3457				
	3457				
	3232		$ 630.00		
	3457				
	3457				
	3457				
	3457				
	3457				
	3457				
	3457				
	3457				
	3457				
	3457				
	3457				
	3457				
	3457				
	3457				
	3457				
	3457				
	5235		$ 550.00		

Sheet 1

SoF 2		Date	SS from TF
		1/15/1997	$ 495.42
		2/10/1997	$ 517.24
$4,682.00		3/17/1997	$ 512.00
$4,682.00		4/14/1997	$ 512.00
$4,682.00			
$4,682.00		**Total**	**$ 2,036.66**
$4,682.00			
$4,822.00			
$4,822.00			
$4,822.00			
$3,215.00			
$3,215.00			
$3,215.00			
$3,215.00			
$3,215.00			
$3,215.00			
$3,215.00			
$3,215.00			
$3,215.00			
$3,215.00			
$3,215.00			
$3,215.00			
$3,215.00			
$3,215.00			
$3,215.00			
$3,215.00			
$3,215.00			
$3,215.00			
$3,215.00			
$3,279.00			

Sheet 1

Child's Name	Service #	SoF 5	SoF O
Cathey,	3201		
Johnathan	3225		
SSI	3201		
	3210	$ 24.58	
	3210		$ 245. 80
	3233	$ 117.18	
	3210		$ 374.02
	3233	$ 119.04	
	3210		$ 374.02
	3233	$ 340.38	
	3210		$ 374.02
	3233	$ 218. 24	
	3210		$ 98.32
	Total	**$ 819.42**	**$ 1.466.18**
	Total SoF	**$ 2.935.35**	

Sheet 1

SoF1	Date	SS from TF account
$ 409.17	4/14/97	$ 512.00
$ 98.26	5/12/97	$ 350.67
$ 142.32	6/16/97	$ 512.00
	7/15/97	$ 316.56
	Total	**$ 1.691.23**
$ 649.75		

Sheet 1

	3210			$	325.17
	2805			$	359.92
	3210			$	325.17
	2805			$	359.92
	3210			$	325.17
	2805			$	359.92
	3210			$	325.17
	2805			$	359.92
	2805			$	374.00
	3210			$	325.17
	3210			$	325.17
	2805			$	374.00
	3210			$	325.17
	2805			$	374.00
	3210			$	337.67
	2805			$	374.00
	3210			$	337.67
	2805			$	374.00
	2805			$	68.00
	3210			$	337.67
	2805		$ 17.00		
	2807			$	184.11
	Total		$ 4,083.40		$ 11,597.66
	Total SoF		**$ 15,681.06**		

Sheet 1

This page intentionally left blank.

Sheet 1

Child's Name	Service #	SoF 5	SoF Q
Hallett,	3210		$ 303.56
Anthony	3212		$ 141.85
SSI	3233	$ 91.14	
	3210		$ 303.56
	3212		$ 141.85
	3210		$ 303.56
	3212		$ 141.85
	3233	$ 174.84	
	3210		$ 303.56
	3212		$ 141.85
	3233	$ 236.84	
	3210		$ 303.56
	3212		$ 141.85
	3233	$ 116.56	
	3210		$ 303.56
	3212		$ 141.85
	3233	$ 246.76	
	3210		$ 325.17
	3212		$ 146.11
	3233	$ 282.10	
	3212		$ 146.11
	3210		$ 325.17
	3210		$ 325.17
	3212		$ 146.11
	3210		$ 325.17
	3212		$ 146.11
	3210		$ 325.17
	3212		$ 146.11
	3210		$ 325.17
	3212		$ 146.11
	3210		$ 325.17
	3212		$ 146.11
	3233	$ 457.33	
	3210		$ 325.17

Sheet 1

Date	SS from TF account
1/15/97	$ 495.42
2/2/97	$ 21.82
2/10/97	$ 445.41
3/17/97	$ 445.41
4/2/97	$ 116.60
4/17/97	$ 445.41
5/13/97	$ 578.59
6/16/97	$ 445.41
7/2/97	$ 66.59
7/15/97	$ 445.41
8/15/97	$ 445.41
9/15/97	$ 471.28
10/15/97	$ 471.28
11/14/97	$ 471.28
12/15/97	$ 471.28
1/2/98	$ 66.59
1/2/98	$ 66.59
1/2/98	$ 40.72
1/15/98	$ 471.28
2/13/98	$ 471.28
3/13/98	$ 718.50
4/15/98	$ 471.28
5/15/98	$ 471.28
6/15/98	$ 620.44
7/15/98	$ 471.28
8/14/98	$ 471.28
9/15/98	$ 620.44
10/15/98	$ 483.78
Total	**$ 11,281.34**

Sheet 1

Child's Name	Service #	SoF 5	SoF 1
Hartell, Jon	2807	$ 24.54	
SSA	3210		
	3212	$ 4.66	
	3218	$ 50.62	
	3210		$ 283.62
	2808	$ 25.00	
	2805	$ 372.80	
	3233	$ 163.42	
	3210		$ 297.60
	2805	$ 410.08	
	3218	$ 106.86	
	3233	$ 116.56	
	2805	$ 186.40	
	3210		$ 297.60
	2808	$ 35.00	
	2805	$ 279.60	
	3218	$ 56.24	
	3233	$ 184.14	
	2805	$ 410.08	
	3210		$ 297.60
	3218	$ 78.74	
	3233	$ 246.76	
	2805	$ 410.08	
	3210		$ 297.60
	3233	$ 82.77	
	3210		$ 297.60
	2805		
	3233	$ 79.05	
	3210		
	2805		
	3210		
	3233	$ 86.63	
	3218	$ 101.23	
	2805		

Sheet 1

SoF 2	Date	
	1/15/97	$ 102.00
$ 9.78	2/10/97	$ 105.00
	3/17/97	$ 105.00
	4/17/97	$ 105.00
	5/14/97	$ 105.00
	7/1/97	$ 105.00
	7/15/97	$ 105.00
	8/15/97	$ 105.00
	9/15/97	$ 105.00
	10/15/97	$ 105.00
	11/14/97	$ 105.00
	12/15/97	$ 105.00
	1/15/98	$ 105.00
	2/13/98	$ 107.00
	3/13/98	$ 107.00
	4/15/98	$ 107.00
	Total	**$ 1,683.00**
$ 410.08		
$ 303.56		
$ 410.08		
$ 21.61		
$ 410.08		

Sheet 1

Child's Name	Service #		SoF 5		SoF 2
Herandez,	3456		$ 4,682.00		
Rachel	3457		$ 3,121.00		
SSI	3457		$ 3,121.00		
	3457		$ 3,121.00		
	3457		$ 3,121.00		
	3457		$ 3,121.00		
	3457		$ 3,215.00		
	3457		$ 3,215.00		
	3457		$ 3,215.00		
	3457		$ 1,479.52		
	3456		$ 2,694.67		
	3456		$ 4,822.00		
	3456		$ 4,822.00		
	3456		$ 4,822.00		
	3456		$ 4,822.00		
	3456		$ 4,822.00		
	3456		$ 4,822.00		
	3456		$ 4,822.00		
	3456		$ 4,822.00		
	3456		$ 4,822.00		
	3456				$ 4,822.00
	3457		$ 3,215.00		
	3457		$ 845.44		
	3457				$ 2,322.81
	3234				$ 75.00
	3457				$ 3,365.00
	3457				$ 3,365.00
	3457				$ 3,365.00
	3433		$ 324.00		
	3457				$ 3,365.00
	3433		$ 172.00		
	3457				$ 3,365.00
	3457				$ 3,365.00
	3457				$ 3,365.00
	3457				$ 3,365.00

Sheet 1

		SS From TF account
6/18/97		$ 1,966.20
9/15/97		$ 983.10
10/15/97		$ 491.55
11/14/97		$ 491.55
12/15/97		$ 491.55
1/15/98		$ 491.55
2/13/98		$ 485.45
3/13/98		$ 500.55
4/15/98		$ 500.55
5/15/98		$ 500.55
6/15/98		$ 500.55
7/15/98		$ 500.55
8/14/98		$ 500.55
9/15/98		$ 500.55
10/15/98		$ 500.55
Total		**$ 9,405.35**

Sheet 1

Child's Name	Service #		SoF5	
Hontz, Kyle	3202			
SSA	3225		$	100.00
	3202			
	3202			
	3233		$	68.04
	3210		$	92.28
	3210			
	3210			
	3210			
	Total		$	206.32
	Total SoF		**$**	**1,905.41**

Sheet 1

SoF 4		Date		SS from TF account	
$	376.05	6/15/98		$	143.00
$	100.28	**Total**		**$**	**143.00**
$	300.84				
$	199.94				
$	468.04				
$	199.94				
$	1,645.09				

Sheet 1

	2874				$ 809.64
	3210		$ 337.67		
	3212		$ 146.11		
	3210		$ 337.67		
	3212		$ 146.11		
	3210		$ 337.67		
	3212		$ 146.11		
	3210		$ 337.67		
	3212		$ 146.11		
	3210		$ 337.67		
	Total		$ 9,941.26		$ 5,596.56
	Total SoF		**$ 15,537.82**		

Sheet 1

This page intentionally left blank.

Sheet 1

	3235		$ 140.00		
	3235		$ 350.00		
	3235		$ 280.00		
	3235		$ 140.00		
	3235		$ 280.00		
	3235		$ 140.00		
	3235		$ 140.00		
	3235		$ 70.00		
	3235		$ 140.00		
	3233		$ 288.92		
	3235		$ 140.00		
	3235		$ 140.00		
	3235		$ 70.00		
	3233		$ 633.95		
	Totals		$ 23,213.71		$ 25,185.32
	Total SoF		**$ 48,399.03**		

Sheet 1

This page intentionally left blank.

Sheet 1

Child's Name	Service #		SoF 5		SoF O
Manning Jr.	2804		$ 92.26		
SAM	3210				$ 359.49
SSI	3212				$ 141.85
	2804		$ 92.26		
	3210				$ 359.49
	3212				$ 141.85
	2804		$ 92.26		
	3210				$ 359.49
	3212				$ 141.85
	3233		$ 153.73		
	2804		$ 92.26		
	3210				$ 359.49
	3212				$ 141.85
	3235		$ 240.00		
	2804		$ 92.26		
	3210				$ 374.02
	3212				$ 141.85
	2804		$ 92.26		
	3210				$ 374.02
	3212				$ 141.85
	3210				$ 397.74
	3212				$ 146.11
	3210			#	$ 397.74
	3212				$ 146.11
	3210				$ 397.74
	3212				$ 146.11
	3210				$ 397.74
	3212				$ 146.11
	3235		$ 195.00		
	3235		$ 195.00		
	3210				$ 397.74
	3212				$ 146.11
	3232		$ 1.000.00		
	3232		$ 200.00		

Sheet 1

		SS from	
1/2/97		$ 156.66	
1/15/97		$ 476.86	
2/10/97		$ 498.68	
3/17/97		$ 491.55	
4/14/97		$ 491.55	
5/14/97		$ 491.55	
6/13/97		$ 491.55	
7/15/97		$ 491.55	
8/15/97		$ 491.55	
9/15/97		$ 491.55	
10/15/97		$ 491.55	
11/14/97		$ 491.55	
12/15/97		$ 491.55	
1/15/98		$ 491.55	
2/13/98		$ 485.45	
Total		**$ 7.024.70**	

Sheet 1

Child's Name	Service #		SoF Q	
Mclennan, Alyssa	3210		$	303.56
SSI	3212		$	141.85
	3210		$	303.56
	3212		$	141.85
	3210		$	303.56
	3212		$	141.85
	3210		$	303.56
	3212		$	141.85
	3210		$	303.56
	3212		$	141.85
	3210		$	303.56
	3212		$	141.85
	3210		$	325.17
	3210		$	325.17
	3210		$	325.17
	3210		$	325.17
	3210		$	85.44
	3210		$	239.73
	3210		$	325.17
	3210		$	325.17
	3210		$	325.17
	3210		$	325.17
	3210		$	325.17
	3210		$	325.17
	3210		$	325.17
	3210		$	337.67
	3210		$	337.67
	3210		$	337.67
	3210		$	337.67
	3210		$	337.67
	3210		$	337.67
	3210		$	337.67
	3210		$	337.67
	3210		$	177.60

Sheet 1

Date		SS from TS account		
4/2/97		$	445.41	
4/2/97		$	445.41	
4/2/97		$	445.41	
6/13/97		$	445.41	
7/15/97		$	445.41	
8/15/97		$	445.41	
9/15/97		$	325.17	
10/15/97		$	325.17	
11/14/97		$	325.17	
12/15/97		$	325.17	
1/15/98		$	325.17	
2/13/98		$	325.17	
3/13/98		$	325.17	
4/15/98		$	325.17	
5/15/98		$	325.17	
6/15/98		$	325.17	
7/15/98		$	325.17	
8/14/98		$	325.17	
9/15/98		$	337.67	
10/15/98		$	337.67	
11/13/98		$	337.67	
12/15/98		$	337.67	
1/1/99		$	98.28	
1/15/99		$	337.67	
2/15/99		$	337.67	
3/15/99		$	337.67	
4/15/99		$	337.67	
5/15/99		$	177.60	
Total		**$**	**9,551.74**	

Sheet 1

Child's Name	Service #		SoF 5		SoF O
Reynolds,	3233		$ 56.00		
Justin	3210		$ 442.26		
SSI	3216		$ 300.00		
	3210				$ 442.26
	3216				$ 300.00
	3210				$ 442.26
	3216				$ 300.00
	3233		$ 105.40		
	3210				$ 442.26
	3216				$ 300.00
	3233		$ 18.60		
	3210				$ 442.26
	3210				$ 442.26
	3216				$ 300.00
	3233		$ 17.98		
	3210				$ 468.04
	3216				$ 300.00
	3233				$ 39.06
	3210				$ 468.04
	3216				$ 300.00
	3233		$ 3.78		
	3210				$ 468.04
	3216				$ 300.00
	3233		$ 19.53		
	3233				$ 18.90
	3210				$ 468.04
	3216				$ 300.00
	3210				$ 468.04
	3216				$ 300.00
	3216				$ 300.00
	3210				$ 468.04
	3216				$ 300.00
	3210				$ 468.04
	3216				$ 300.00

Sheet 1

		SS from	
3/17/97		$	442.40
4/14/97		$	330.22
5/14/97		$	343.83
6/16/97		$	491.55
7/15/97		$	442.26
8/15/97		$	540.84
9/15/97		$	491.55
10/15/97		$	491.55
11/14/97		$	491.55
12/15/97		$	491.55
1/15/98		$	491.55
2/13/98		$	485.45
3/13/98		$	500.55
4/15/98		$	500.55
5/15/98		$	500.55
6/15/98		$	500.55
7/15/98		$	500.55
8/14/98		$	500.55
9/15/98		$	500.55
10/15/98		$	500.55
11/13/98		$	500.55
12/15/98		$	500.55
1/15/99		$	500.55
2/15/99		$	500.55
3/15/99		$	506.55
Total		**$**	**12,074.45**

Sheet 1

Child's Name	Service #	SoF 5		SoF 1
Saetern.	3211			$ 303.56
Jamine	3212			$ 141.85
SSI	3216			$ 400.00
	3216			$ 300.00
	3216	$ 300.00		
	3216			$ 207.09
	3211			$ 89.73
	3212			$ 41.94
	3216	$ 88.74		
	Total	$ 388.74		$ 1,484.17
	Total	**$ 1,872.91**		

Sheet 1

Date		SS from TS account
1/13/97		$ 495.42
2/10/97		$ 517.24
3/2/97		$ 338.76
3/2/97		$ 338.76
3/2/97		$ 338.76
3/17/97		$ 350.67
4/17/97		$ 338.76
Total		**$ 2,718.37**

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF WHATCOM

JESSICA BRAAM, et al.	)	
	)	
Plaintiffs,	)	No. 98-2-01570-1
	)	
Vs.	)	INJUNCTION
	)	
STATE OF WASHINGTON, et al.,	)	
	)	
Defendants.	)	
	)	(DAVID A. NICHOLS)

THIS MATTER, having come on for hearing, the Court having reviewed the pleadings, presided over the proceedings and trial, taken the verdict of the jury, heard the arguments of counsel, and reviewed the records and files, it is hereby

ORDERED, ADJUDGED AND DECREED that the Plaintiffs' Motion for Injunctive Relief is GRANTED.

I. INTRODUCTION

The Court presided over a seven-week jury trial in this matter and heard all of the evidence. On December 4, 2001, the jury returned a verdict for plaintiffs. The jury found both that the defendants had violated the constitutional rights of the plaintiff class and that such violation was a proximate cause of harm to the plaintiff class in one or more ways claimed by plaintiffs.

* *several punctuation and format inconsistencies have been corrected*

The jury was convinced and the Court finds substantial evidence to support is finding that the plaintiff class is being harmed by certain current practices, actions and omissions of the defendants. Trial courts have broad discretion to fashion an injunction that is appropriate to the facts, circumstances and equities before it.

Therefore, in light of the jury's verdict and after considering the evidence that formed the basis for the jury's verdict, the Court finds that the plaintiff class is entitled to injunctive relief. The Court now issues its injunction to remedy the constitutional violations found by the jury.

Now, therefore, the Court makes the following

FINDINGS

The Court finds that there are five areas of practice by defendants that must be addressed in this injunction in order to cure the constitutional violations:

1. Children are harmed by being subjected to unnecessary multiple placements.
2. Foster parents are inadequately trained, informed and supported to provide proper care for children in the class.
3. Children are denied necessary mental health care (assessments and treatment).
4. Children are placed in unsafe placements (DSHS offices, homes of sexual offenders, violent offenders and held in detention/jails).
5. Children are separated from their siblings.

In order to protect children from harm, the Court addresses these areas by injunction.

INJUNCTION

Definitions

"Child" or "Foster child" means any child in the plaintiff class as defined by the Court.

"Defendants" means the State of Washington, the Department of Social and Health Services, and the Secretary of the Department, Dennis Braddock, and his successors in office.

"Placement" means any home or facility, whether public or private, in which the child is placed while in defendants' custody regardless of the length of time the child remains in that home or facility. Respite care and short-term interruptions such as hospital stays shall not be included provided that the child returns to the home or facility in which he was placed prior to respite care or short-term care. All homes and facilities the state is mandated to include under its reporting responsibilities pursuant to 42 U.S.C. sec. 679, 45 CFR 1355.407, Appendices A & B, and the Child Welfare Policy Manual shall be included as a placement.

"Siblings" means biological siblings or step-siblings.

The Court **orders** the Defendants, and their employees and agents, to comply with the following directives:

I. Stability of Placements

The Court recognizes that eliminating unnecessary multiple placements will require additional time and effort by the State. To

commence this effort, DSHS shall increase the number of foster homes by 500 additional net foster homes by December 31, 2002 as compared to the number of foster homes/group homes available as of December 31, 2001. Foster parents in the new foster homes shall be trained, informed and prepared to care for foster children in the class with emotional and behavioral problems as required in Section II of this injunction. A majority of such new foster homes shall be licensed for and capable of providing therapeutic foster care.

Except in situations where delay would place the child in imminent danger, defendants shall notify the child's attorney, guardian, ad litem, and/or CASA prior to moving a child to a new placement. When such an emergency prevents notice, it shall be provided no later than 24 hours following the child's move.

Within two weeks of a foster care child's third placement, the Defendants shall conduct a comprehensive assessment[1] of the child's needs and determine the factors contributing to multiple placements. Defendants shall promptly revise the child's individual service plan and address each of the factors identified in the assessment. The assessment and any recommendations shall be in writing.

In order to eliminate the harm caused by disruption to children's education, the defendants

---

[1] The assessment team shall be compromised of the various disciplines or entities who will be working with the child, such as medical and mental health practitioners, foster parents, school officials, etc. The team shall develop and promulgate a comprehensive analysis and plan for the child.

are ordered to provide immediate and child-friendly transportation arrangements for children in the plaintiff class who experience changes in the foster home to be transported between the new foster home and school-of-origin while negotiating with the school district to continue the transportation. As there may be compelling reasons specific to individual children why the defendants cannot comply with this directive, the defendants may be excused from this directive by documenting the necessity for changing schools and what steps have been implemented between schools to make the transition as seamless as possible, which means, at a minimum, that the two schools communicate all the relevant data on the child. It shall be the responsibility of the State to insure that the new school has all relevant background on the child. To the extent possible, no child shall be moved except at the end of a term.

The defendants are further ordered to work with the Superintendent of Public Instruction, school districts, and other relevant educational institutions to increase the supports and programs available to foster children in the educational system. The defendants will report to the Court within 180 days of this order regarding these efforts. Should the report fail to indicate that substantial progress has been made in these collaborative efforts, the Court shall consider additional relief.

If the Department lacks adequate foster homes to comply with any part of this injunction, the Department shall obtain or rent or secure appropriate residential facilities or group homes (licensed for residential use and with proper child welfare professionals to care and supervise the child/children) to assure compliance with this

injunction. If, after adding 500 foster homes, the Defendants still lack adequate foster/group homes to avoid harm to children in its care, the Court will make further orders regarding additional foster home at a later time.

II. Training, Information and Support for Foster Parents and Children

Children in the class suffer from emotional and psychological disabilities and need to be in the care of foster parents/group care caregivers who are trained, informed and supported to care for these children. The Defendants are ordered to provide additional training and support to each State-licensed foster parent ("foster parent" hereinafter) that are necessary to allow foster parents to care for and manage a child with the history and any diagnosis of each child placed in the foster home. The training shall assure the foster parent understands the child's behaviors and has adequate tools available to address the child's behaviors, including adequate information about available regular and special educational programs and opportunities. The defendants shall not place any member of the plaintiff class in any foster home in which the foster parents have not had this training.

The training and support requirements are applicable to both existing and newly recruited foster parents. Defendants shall retain the discretion to determine the number of hours of required annual training as well as the curriculum. However, such training shall be made available and accessible so as to allow foster parents to obtain the required training each year.

The Defendants shall provide each foster parent a full and complete history of each child prior to placement of the child in the home. Along with this information, the Defendants shall provide the foster parents with a copy of the child's DSHS file, health records, educational records. a copy of the child's "Passport" and all reasonably available information on the child. Passports shall be completed within 60 days of the child's placement in DSHS custody.

Whenever a child's special needs and/or behavioral problems require frequent supervision and support, and in every case beginning on a foster child's third placement and following any subsequent placement, the assigned DCFS caseworker or supervisor shall personally visit the child and foster parents in the foster home at least every 30 days. DCFS caseworkers shall be provided specialized training that is necessary to allow them to assist foster parents to care for and manage a child with the diagnosis and history of any child placed in the foster home. The training shall be adequate to assure that the caseworker has professionally adequate skills and knowledge to address the child's behaviors, including adequate information about available regular and special educational programs and opportunities.

Defendants shall develop and implement a system of respite care for foster parents. The system shall include, among other things, the recruitment and training of respite care providers capable of providing respite care to children and youth with emotional and behavioral problems. Defendants shall ensure that such are is available to all foster parents and on no less than a monthly basis to foster parents providing a home for children with behavioral or emotional problems. In devising such a program, defendants shall consult with foster parents and foster parent organizations

Defendants will make substantial efforts to increase kinship foster care. In addressing increased kinship care, defendants shall employ increased use of family group conferencing, and increases staff training regarding the importance of kinship care. The defendants will report to the Court within 180 days of the date of this order regarding these efforts. Should the report fail to indicate that substantial progress has been made in these efforts, the Court will provide additional relief.

III. Mental and Physical Health

Defendants shall provide initial physical and mental health assessments by licensed mental health professionals of each child within 30 days of each child's entry into the foster care system. The assessments and any recommendations made as a result of the assessment shall be in writing and shall be placed in the child's file. Defendants are ordered to provide care for needs identified in those assessments.

Defendants shall, in their provision of mental health assessments and treatment, adhere to the following principles: collaboration with child and family, functional outcomes, collaboration with others, accessible services, best practices, most appropriate setting, timeliness, services tailored to the child and family, stability, and independence. defendants shall provide treatment that will give the foster child a realistic opportunity to be cured or to improve his or her mental condition.

The defendants are ordered to provide the treatment recommended in any assessment or reassessment in the time frame called for in the recommendation but not later than 60 days if no time frame is identified.

IV. Unsafe Placements

The defendants shall cease to hold foster children in unsafe and clearly inappropriate placements. The defendants shall within 90 days of entry of this order case to place foster children for overnight stays of any duration in DSHS offices, or in detention facilities once legal holds are eliminated. The defendants have discretion in deciding how to implement this provision, for example, by developing shelters or short-term foster care home placements.

Beginning 90 days after entry of this order, Defendants will not knowingly[2] place a foster child in a placement or situation that exposes that child to a risk of harm to the mental or physical well being of the child or in a placement where there is a [sic] another person residing who has a history of being sexually abusive or assaultive, or who has demonstrated a pattern of assaultive behavior. This provision does not prohibit defendants from placing youths legally identified as sexually aggressive in a home with other sexually aggressive youth when the home ha been licensed and the foster parents specially trained to deal with sexually aggressive youth, nor does it prohibit defendants from placing youths who have demonstrated a pattern of assaulting siblings in a home with other youth who have demonstrated such a pattern when that home has been licensed and the foster parents specially trained to deal with assaultive youth.

V. Separation of Siblings

There shall be a strong presumption favoring the preservation of relationships among siblings by placing

[2] "Knowingly" means that Defendants have made reasonable inquiry to give them a basis of knowledge.

them in the same home at the time they enter foster care unless one sibling poses a danger to another. Short of an emergency, beginning 90 days from the date of entry of this order, defendants shall not separate siblings who are in foster care unless one sibling poses a danger to another[3]. If the defendants have compelling reasons to believe it is in the best interests of the children to separate siblings in foster care for more than one week for reasons other than safety (for example, if treatment of one sibling requires a more restrictive setting than is necessary for other siblings), DSHS may move for an order from the superior court having jurisdiction over the child's individual case allowing such a separation for good cause. If it becomes necessary to separate siblings, defendants will arrange continuing contact among siblings that shall include at least face-to-face visits and telephone calls.

VI. Monitoring Compliance

In order to secure adequate monitoring and enforcement of the Injunction, the defendants shall conduct one or more independent studies, using a random sample of sufficient size to produce valid and reliable findings, shall be conducted to determine the following:

1. the number of children experiencing three or more placements; for children who have experienced three or more placements, the reasons for placement failure; for foster children who change schools when their placement changes, the impact of such

[3] Not having foster homes with enough space for sibling groups shall not be a valid reason for not following this directive.

changes on their school attendance, performance and achievement.

2. the adequacy of training provided to foster parents and prospective foster parents: the type of information and records provided to foster parents and prospective foster parents; the type of training and information provided to DSHS staff; and defendants' use of respite care and kinship care.

3. whether the ordered assessments are being provided, and provided in a timely and comprehensive manner; whether treatment is being provided in a timely way and in conformity with the principles the Court has set forth.

4. the [sic] number of siblings who have been separated in foster care and the reasons for the separation.

DSHS shall make all records and files of individual foster children available for such independent study. DSHS staff, including, but not limited to caseworkers and supervisors shall also be made available for interviews. The study shall be completed annually so long as this injunction is in effect. The first study shall be completed and a written report submitted to the Court and counsel no later than January 31, 2003, with subsequent studies no later than January 31 of the following years that the injunction is in effect. The defendants shall inform Plaintiffs who will conduct each study. If the parties are unable to agree, the Court will choose who will do the studies. The studies will be made at the State's expense.

Because of the imminent risks to a child's safety and security and the possible need for immediate intervention, the defendants shall maintain a central record (name of child and the child's guardian, facts, and dates, and guardian ad litem) of every allegation that a foster child has been molested, assaulted or sexually assaulted in a foster home, or has been placed in a placement which does not comply with the provisions of this order. These records shall be available to plaintiffs' counsel. Similarly, defendants shall document every instance in which a child is required to sleep in a DSHS office or in a detention facility after legal holds are eliminated, and forward the documentation (including name of child, date(s) and name of guardian ad litem) to counsel for the plaintiff class.

In addition to the records, information, reports and studies required above, defendants shall make quarterly written reports to the Court regarding the status of compliance with this injunction, and serve a copy of such report on counsel for the plaintiff class. Reports will be due March 15, June 15, September 15, and December 15 of each year or at such other time(s) as shall be ordered the Court. The defendants shall address each provision of the injunction and provide the Court with reliable, accurate data, which informs the Court of the defendants' progress of lack of progress in eliminating the harmful practices enjoined in this injunction.

Plaintiffs' Counsel will monitor compliance with this Injunction and will continue to represent the class. Defendants shall provide class counsel with reasonable access to all information necessary to monitor compliance with this Injunction, including

the names, addresses and telephone of all children in the class and their guardians ad litem, and all information in all DSHS files regarding any child in the class. Defendants shall also provide counsel for the plaintiff class with all documents that tend to show, directly or indirectly, compliance or noncompliance with any provision of this order.

VII. Continuing Jurisdiction / Review of Compliance

The Court will retain jurisdiction over this case and over enforcement of this Injunction until the Court is satisfied that the defendants are in compliance, and that there is no reasonable possibility of recurrence of the unconstitutional conditions identified. A review hearing to determine whether the defendants are complying with the terms of the injunction will be held in January of 2003.

DONE IN CHAMBERS this 31st day of May, 2002.

JUDGE DAVID A. NICHOLS

Copies to counsel by email

Supreme Court U.S.
FILED
AUG 2 2002
OFFICE OF THE CLERK

No. 01-1420

IN THE SUPREME COURT OF THE UNITED STATES

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, ET AL.,

Petitioners,

V.

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, GUARDIAN, AND OTHER PERSONS SIMILARLY SITUATED,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

BRIEF FOR THE PETITIONERS

CHRISTINE O. GREGOIRE
Attorney General

William Berggren Collins
Sr. Assistant Attorney General
Counsel of Record

1125 Washington Street SE
Olympia, WA 98504-0100
360-753-6245

Walter Dellinger
Pamela Harris
O'Melveny & Myers

555 13th Street NW
Washington, D.C. 20004
202-383-5300

Counsel For Petitioners

QUESTION PRESENTED

42 U.S.C. §§ 405(j) and 1383(a) authorize the Commissioner of Social Security to appoint a representative payee to receive benefits on behalf of a beneficiary, and social security regulations provide that the payee may use the benefits to pay for the beneficiary's current care. 42 U.S.C. § 407(a) provides that these benefits are not subject to "execution, levy, attachment, garnishment, or other legal process". This case presents the following question:

Does a representative payee violate 42 U.S.C. § 407(a) when the payee uses the benefits to pay for the beneficiary's current care?

TABLE OF CONTENTS

OPINIONS BELOW 1

JURISDICTION 1

STATUTORY PROVISIONS INVOLVED 1

STATEMENT 2

A. Statutory And Regulatory Background 2

1. Social Security Benefits 2

2. Representative Payees 3

3. Use Of Benefits By The Representative Payee 6

4. Section 407(a) 7

B. The Department's Responsibilities As Representative Payee For Foster Children 8

C. Procedural History 15

SUMMARY OF ARGUMENT 19

ARGUMENT 21

A. Social Security Statutes And Regulations Expressly Authorize The Department, Acting As Representative Payee, To Use Benefits For The Beneficiary's Current Maintenance 21

B. Section 407 Does Not Bar A Representative Payee From Using Benefits To Pay For Current Maintenance 23

C. The Decision Below Should Be Reversed Because It Is Inconsistent With The Commissioner's Interpretation Of SSA Regulations, Which Are Entitled To Considerable Weight 31

D. The Department, Acting As Representative Payee, Does Not Act As A Creditor When It Uses Benefits To Pay For a Foster Child's Care 34

CONCLUSION 39

TABLE OF AUTHORITIES

Cases

Bennett v. Arkansas
485 U.S. 395 (1988) 24, 28

Bowles v. Seminole Rock & Sand Co.
325 U.S. 410 (1945) 31

Califano v. Jobst
434 U.S. 47 (1977) 22

Crawford v. Gould
56 F.3d 1162 (9th Cir. 1995) 23

Ecolono v. Div. of Reimbursements of the Dep't of Health & Mental Hygiene
769 A.2d 296 (Md. App. 2001) 26

In re the Guardianship of Nelson
547 N.W.2d 105 (Minn. Ct. App. 1996) 30

Mason v. Sybinski
280 F.3d 788 (7th Cir. 2002) 25

Mellies v. Mellies
815 P.2d 114 (Kan. 1991) 30

Philpott v. Essex County Welfare Bd.
409 U.S. 413 (1973) 19, 24, 28

United States v. Larionoff
431 U.S. 864 (1977) 31

Statutes

42 U.S.C. § 1381a 3

42 U.S.C. § 1383(a)(2)(A)(ii)(I) 3, 26

42 U.S.C. § 1383(a)(2)(A)(iii) 3, 27

42 U.S.C. § 1383(a)(2)(B)(i)(I) 3

42 U.S.C. § 1383(a)(2)(B)(i)(II) 4, 6

42 U.S.C. § 1383(a)(2)(B)(iii)(I)-(II) 4

42 U.S.C. § 1383(a)(2)(B)(iii)(III) 4

42 U.S.C. § 1383(a)(2)(B)(v)(I)-(III) 4

42 U.S.C. § 1383(a)(2)(B)(v)(IV) 4

42 U.S.C. § 1383(a)(2)(B)(xi) 5

42 U.S.C. § 1383(a)(2)(C)(i) 5

42 U.S.C. § 1383(a)(2)(C)(i)-(ii) 27

42 U.S.C. § 1383(a)(2)(C)(ii) 5

42 U.S.C. § 1383(a)(2)(C)(iv) 6

42 U.S.C. § 1383(a)(2)(D)(i)(I)-(II) 15

42 U.S.C. § 1383(a)(2)(F) 10

42 U.S.C. § 1383(a)(2)(ii)(I) 21

42 U.S.C. § 1383(a)(2)(v)(I) 29

42 U.S.C. § 1383(a)(4), ... 3

42 U.S.C. § 1383(d)(1) 8

42 U.S.C. § 402(d) 3
42 U.S.C. § 405(a) 6
42 U.S.C. § 405(j)(1)(A) 1, 3, 21, 27
42 U.S.C. § 405(j)(2)(A)(i) 3
42 U.S.C. § 405(j)(2)(A)(ii) 4, 6
42 U.S.C. § 405(j)(2)(C)(i)(I)-(II) 4
42 U.S.C. § 405(j)(2)(C)(i)(III) 4
42 U.S.C. § 405(j)(2)(C)(iii)(I) 29
42 U.S.C. § 405(j)(2)(C)(iii)(I)-(III) 4
42 U.S.C. § 405(j)(2)(C)(iii)(IV) 4
42 U.S.C. § 405(j)(2)(E)(i) 5
42 U.S.C. § 405(j)(3)(A) 5
42 U.S.C. § 405(j)(3)(A)-(B) 27
42 U.S.C. § 405(j)(3)(B) 5
42 U.S.C. § 405(j)(3)(D) 6
42 U.S.C. § 405(j)(4)(A)(i)(I)-(II) 15
42 U.S.C. § 407(a) ..... passim
42 U.S.C. § 408(a)(5) 3
Title XVI of the Social Security Act
(42 U.S.C. §§ 1381 *et seq.*)
(Oct. 30, 1972, Pub. L. No. 92-603, Title I, §§ 132(a)-(c), 136, Title III, § 305(a), 86 Stat. 1360, 1364, 1484) 2

Wash. Rev. Code § 13.34 8
Wash. Rev. Code § 13.34.030(5) 8
Wash. Rev. Code § 13.34.130(1)(b) 8
Wash. Rev. Code § 13.34.130(2) 8
Wash. Rev. Code §§ 26.20.030-.035 29
Wash. Rev. Code § 74.13.060(2) 12, 38
Wash. Rev. Code § 74.13.060(5) 17
Wash. Rev. Code § 74.20A.010 11

Other Authorities

26 Fed. Reg. 11828 32
47 Fed. Reg. 20468-01 28

Regulations

20 C.F.R. § 404.1604 32
20 C.F.R. § 404.2021(b) 5
20 C.F.R. § 404.2021(b)(1) 29
20 C.F.R. § 404.2035 ..... 6, 27
20 C.F.R. § 404.2035(a) 21
20 C.F.R. § 404.2040 24
20 C.F.R. § 404.2040(a)(1) 7, 21, 22

20 C.F.R. § 404.2040(d) 7

20 C.F.R. § 404.2045 7

20 C.F.R. § 416.621(b) 5

20 C.F.R. § 416.621(b)(1) 29

20 C.F.R. § 416.635(a) 6, 21, 27

20 C.F.R. § 416.640(a) 6, 22

20 C.F.R. § 416.640(d) 7

20 C.F.R. § 416.645 7

20 C.F.R. § 426.640 24

Wash. Admin. Code § 388-25-0210 12

Wash. Admin. Code § 388-70-069 12

Wash. Admin. Code § 388-70-069(1) 12

Social Security Administration Rulings

SSR 66-20, 1960-1974 Soc. Sec. Rep. Ser. 385 (1966 WL 3055 (S.S.A.)) 33, 35

SSR 68-18, 1960-1974 Soc. Sec. Rep. Ser. 516 (1968 WL 3918 (S.S.A.)) 33, 35

BRIEF FOR THE PETITIONERS

OPINIONS BELOW

The opinion of the Washington Supreme Court is reported at 145 Wash. 2d 1, 32 P.3d 267. Pet. App. 1. The Okanogan County Superior Court's Memorandum Opinion (Pet. App. 122), Plaintiff's Order Granting Plaintiff's Motion For Summary Judgment (Pet. App. 112), and Court's Findings Of Fact On Order Of Remand From The Supreme Court (Pet. App. 46), are unpublished.

JURISDICTION

The judgment of the Washington Supreme Court was entered October 11, 2001. Pet. App. 1. A timely motion for reconsideration was denied on December 14, 2001. Pet. App. 40. The petition for a writ of certiorari was filed March 14, 2002, and was granted May 28, 2002. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 405(j)(1)(A), provides, in part: "If the Commissioner of Social Security determines that the interest of any individual under this subchapter, would be served thereby, certification of payment of such individual's benefit under this subchapter may be made . . . for his or her use and benefit, to another individual, or an organization, with respect to whom the requirements of paragraph (2) have been met (hereinafter in this subsection referred to as the individual's "representative payee")." Pet. App. 157.

42 U.S.C. § 1383(a)(2)(ii)(I), provides in part: "Upon a determination by the Commissioner of Social Security that the interest of such individual

would be served thereby, such payments shall be made . . . to another individual, or an organization, with respect to whom the requirements of subparagraph (B) have been met (in this paragraph referred to as such individual's 'representative payee') for the use and benefit of the individual[.]"

42 U.S.C. § 407(a), provides: "The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law." Pet. App. 170.

The other relevant provisions of Title II of the Social Security Act, 42 U.S.C. §§ 401 *et seq.* (Pet. App. 145); Title XVI of the Social Security Act, 42 U.S.C. §§ 1381 *et seq.* (Pet. App. 177); social security regulations (Pet. App. 205); and Washington state statutes and regulations (Pet. App. 245 and 256, respectively), are set forth in the appendix to the certiorari petition.

STATEMENT

A. Statutory And Regulatory Background

1. Social Security Benefits

This case involves two different categories of benefits under the Social Security Act. The first is Old Age, Survivors and Disability Insurance Program (OASDI) authorized by Title II of the Act. 42 U.S.C. §§ 401 *et seq.* Under Title II, a child is eligible for OASDI benefits if the child is under the age of 18, unmarried, and was dependent on a wage

earner entitled to Title II benefits. 42 U.S.C. § 402(d), Pet. App. 145. The second type of social security benefit is Supplemental Security Income (SSI) authorized by Title XVI of the Social Security Act, 42 U.S.C. §§ 1381 *et seq.* SSI benefits are available to aged, blind, or disabled individuals, including children, who meet certain income and resource requirements. 42 U.S.C. § 1381a, Pet. App. 177.

2. Representative Payees

When an individual qualifies for OASDI or SSI benefits, the Commissioner of Social Security (Commissioner) is authorized to appoint a representative payee to receive the benefits on behalf of the qualified individual if the Commissioner "determines that the interest of [the] individual under this subchapter, would be served thereby". 42 U.S.C. §§ 405(j)(1)(A), Pet. App. 157; 1383(a)(2)(A)(ii)(I), Pet. App. 178. The benefits paid to the representative payee are for the beneficiary's use and benefit only. Misuse of the benefits is grounds for decertification as representative payee (*see* 42 U.S.C. § 405(j)(1)(A), Pet. App. 157; 1383(a)(2)(A)(iii), Pet. App. 179) and also a criminal offense (*see* 42 U.S.C. §§ 408(a)(5), Pet. App. 172; 1383(a)(4), Pet. App. 192).

Congress set out comprehensive requirements for the certification of payments to a representative payee. First, the Commissioner is required to conduct an investigation of the person seeking to be appointed representative payee. To the extent practicable this shall include a face-to-face interview. 42 U.S.C. §§ 405(j)(2)(A)(i), Pet. App. 158; 1383(a)(2)(B)(i)(I), Pet. App. 179. The commissioner

may approve certification of benefits to a potential representative payee only if there is "adequate evidence that such certification is in the interest of [the beneficiary] (as determined by the Commissioner . . . in regulations)". 42 U.S.C. §§ 405(j)(2)(A)(ii), Pet. App. 158; 1383(a)(2)(B)(i)(II), Pet. App. 179.

Congress also imposes limits on who the Commissioner may appoint as representative payee. The Commissioner cannot appoint any person who has been convicted of misusing benefits, and individuals who have previously had their designation as representative payee revoked are generally disqualified as well. 42 U.S.C. §§ 405(j)(2)(C)(i)(I)-(II), Pet. App. 160; 1383(a)(2)(B)(iii)(I)-(II), Pet. App. 180-81. As a general rule, Congress also prohibits appointment of any person who "is a creditor of [the beneficiary] who provides [the beneficiary] with goods or services for consideration". 42 U.S.C. §§ 405(j)(2)(C)(i)(III), Pet. App. 160; 1383(a)(2)(B)(iii)(III), Pet. App. 181.[1]

The Commissioner's regulations establish an order of preference for appointment as

[1] This prohibition does not apply if the creditor is a relative living in the same household as the beneficiary; is the legal guardian or legal representative of the beneficiary; or is a facility licensed as a care facility under the laws of a state or political subdivision. 42 U.S.C. §§ 405(j)(2)(C)(iii)(I)-(III), Pet. App. 160-61; 1383(a)(2)(B)(v)(I)-(III), Pet. App. 181. Congress also permits the Commissioner to certify the payment of benefits to the administrator, owner, or employee of a licensed care facility if the beneficiary resides in the care facility and the Commissioner has been unable to find an alternate payee. 42 U.S.C. §§ 405(j)(2)(C)(iii)(IV), Pet. App. 161; 1383(a)(2)(B)(v)(IV), Pet. App. 181-82.

representative payee. For a beneficiary under the age of 18, the first preference is a natural or adoptive parent who has custody of the child or a guardian. This is followed by parents without custody, relatives, and close friends. The last preference is an authorized social service agency or custodial institution. 20 C.F.R. §§ 404.2021(b), Pet. App. 209-10; 416.621(b), 234-35.

Once the Commissioner selects a representative payee, Congress provides a mechanism for any challenge to that choice. "Any individual who is dissatisfied . . . with the designation of a particular person to serve as representative payee shall be entitled to a hearing by the Commissioner". 42 U.S.C. §§ 405(j)(2)(E)(i), Pet. App. 163; 1383(a)(2)(B)(xi), Pet. App. 184.

Finally, Congress requires the Commissioner to "establish a system of accountability monitoring whereby [representative payees] shall report not less often than annually with respect to the use of such payments". 42 U.S.C. §§ 405(j)(3)(A), Pet. App. 165; 1383(a)(2)(C)(i), Pet. App. 185. As part of this monitoring, the Commissioner "shall establish and implement statistically valid procedures for reviewing such reports in order to identify instances in which [representative payees] are not properly using such payments". 42 U.S.C. §§ 405(j)((3)(A), Pet. App. 165; 1383(a)(2)(C)(i), Pet. App. 185. If the representative payee is a state institution, the Commissioner "shall establish a system of accountability monitoring for institutions in each State". 42 U.S.C. §§ 405(j)(3)(B), Pet. App. 165; 1383(a)(2)(C)(ii), Pet. App. 185-86. In addition to this monitoring, the Commissioner can require a report from a payee at any time if the Commissioner

believes that benefits are being misused. 42 U.S.C. §§ 405(j)(3)(D), Pet. App. 165; 1383(a)(2)(C)(iv), Pet. App. 186.

3. Use Of Benefits By The Representative Payee

In contrast to the detailed requirements governing the designation of a representative payee, Congress did not specify precisely how benefits should be used, beyond the general rule that certification must be "in the interest of the [beneficiary] *(as determined by the Commissioner . . . in regulations)*". 42 U.S.C. § 405(j)(2)(A)(ii) (emphasis added), Pet. App. 158; 42 U.S.C. § 1383(a)(2)(B)(i)(II), Pet. App. 179. Congress delegated to the Commissioner the task of determining what uses of benefits are "in the interest" of the beneficiary, and thus consistent with the statute.

Under authority codified in 42 U.S.C. § 405(a), Pet. App. 156, the Commissioner has adopted regulations specifying the proper use of benefits by a representative payee. Once appointed, the representative payee is responsible for using the benefits "only for the use and benefit of the beneficiary in a manner and for the purposes he or she determines, under the guidelines in this subpart, to be in the best interests of the beneficiary". 20 C.F.R. §§ 404.2035, Pet. App. 213; 416.635(a), Pet. App. 236. Most important for this case, the benefits are deemed conclusively to have been used "for the use and benefit of the beneficiary if they are used for the beneficiary's current maintenance". 20 C.F.R. §§ 404.2040(a)(1), Pet. App. 214; 416.640(a), PA. at 237. Current maintenance

includes "cost incurred in obtaining food, shelter, clothing, medical care, and personal comfort items". 20 C.F.R. §§ 404.2040(a)(1), Pet. App. 214; 416.640(a), Pet. App. 237.

The Commissioner's regulations also address claims of creditors. "A payee may not be required to use benefit payments to satisfy a debt of the beneficiary, if the debt arose prior to the first month for which payments are certified to a payee." 20 C.F.R. §§ 404.2040(d), Pet. App. 216; 416.640(d), Pet. App. 239. If a debt arose prior to the first month for which payments were certified "a payee may satisfy it . . . if the current and reasonably foreseeable needs of the beneficiary are met". 20 C.F.R. §§ 404.2040(d), Pet. App. 216; 416.640(d), Pet. App. 239.

After a representative payee has used the benefits for current maintenance and the other purposes authorized under the regulations, any remaining amount must be conserved or invested, preferably in interest-bearing accounts. 20 C.F.R. §§ 404.2045, Pet. App. 223; 416.645, Pet. App. 242.

4. Section 407(a)

The Social Security Act also contains an anti-attachment provision that limits the ability of third-parties to attach or legally encumber OASDI and SSI benefits. According to that provision:

> "The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment,

garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law." 42 U.S.C. § 407(a), Pet. App. 170.

See also 42 U.S.C. § 1383(d)(1), Pet. App. 200 (applying § 407(a) to SSI benefits).

B. The Department's Responsibilities As Representative Payee For Foster Children

1. The Department of Social and Health Services (Department or DSHS) is responsible for protecting abused and neglected children in Washington. Washington has a carefully crafted system, including judicial oversight, for removing a dependent child from his or her home and placing the child in foster care. Wash. Rev. Code 13.34. A "dependent child" is one who has been abandoned, is abused or neglected, or has no parent, guardian, or other custodian capable of adequately caring for the child. Wash. Rev. Code § 13.34.030(5), Pet. App. 246. Once a court finds that a child is dependent it may order "the child to be removed from his or her home and into the *custody, control, and care of a relative or the department* or a licensed child placing agency for placement in a foster family home or group care facility". Wash. Rev. Code § 13.34.130(1)(b), Pet. App. 250 (emphasis added). When a child is removed from the home, "[p]lacement of the child with a relative . . . shall be given preference by the court." Wash. Rev. Code § 13.34.130(2), Pet. App. 251. Thus, children in the Department's custody are placed in foster care when there is no suitable relative willing or able to care for them. In September 1999, there were 10,578 foster children in the Department's care. Pet. App. 49, ¶ 3.

2. Foster care includes receiving care for emergency 24-hour placement, family foster care, group care, and residential treatment services, which includes group care and therapeutic foster care. JA 190, ¶ 2. Through those programs, the Department provides a wide range of foster care services.[2] These include paying for room, board, clothing, and personal incidentals in family foster care (3210, JA 420-23); paying for additional clothing in excess of the monthly clothing allowance (3225, JA 447-50); paying for additional maintenance for children with behavioral or emotional problems or who are intellectually or physically handicapped (3212, JA 428-30); and paying exceptional costs for enhanced services such as recreational activities that are part of the case plan and typically related to skill building or the development of an enhanced self-image (3217, JA 438-41). The Department pays for evaluations and treatment by a psychologist or psychiatrist in line with the goals of the case plan. (3232/3235, JA 451-53, 460-62). The Department also pays for services to children with complex medical conditions that require skilled nursing care (3448, JA 467-69), and for services for children with extreme behavioral and emotional disorders (3455, JA 469-71).

3. When children enter foster care, the Department checks to see whether they are eligible

---

[2] As part of its payment system, the Department has over 100 service codes for the various services it provides. State's Exhibit No. 1: Defendant's Response To Plaintiff's Order To Produce No. 9, Social Service Payment System Manual, App. C. For example, service code 3210 is for room, board, clothing, and personal incidentals for children in family foster care. JA 420-23.

for OASDI benefits and evaluates children to determine whether they have significant physical or mental impairments that would qualify them for SSI benefits. The Department applies for benefits if it concludes that a child may be eligible, and the Department will appeal a denial of benefits if it concludes that the denial is in error. JA 193, ¶ 8; Pet. App. 63, ¶ 59.

When the Social Security Administration (SSA or Administration) approves benefits for one of these children, it usually appoints the Department representative payee. Because state agencies are listed last in the order of preference for representative payee (*see supra* at 4-5), this generally means that there is nobody else able to serve as payee. As of September 1999, there were about 1,480 children in foster care receiving benefits – 469 received OASDI benefits, 923 received SSI benefits, and 88 received both, and the Department was representative payee for 1,411 of them. Pet. App. 49, ¶ 6-7.

4. When the Department receives OASDI and SSI benefits, it deposits them in a special Foster Care Trust Fund Account in the State Treasurer's Office.[3] The Department maintains an individual

[3] An exception occurs when the Department receives a retroactive lump sum payment of SSI benefits that exceeds six times the monthly benefit amount. In this case, SSA deposits the lump sum payment directly into a dedicated interest-bearing account in a local bank. These funds cannot be used to pay for foster care services and can only be expended for special needs, primarily related to the impairment that gave rise to SSI eligibility. 42 U.S.C. § 1383(a)(2)(F), Pet. App. 188-91; JA 137-38, ¶ 6; Pet. App. 52, ¶ 18.

subsidiary account for each child.[4] JA 137, ¶¶ 4-5; Pet. App. 51-52, ¶¶ 16-17. The Department works to ensure that each child receives the correct benefits and works with SSA to resolve discrepancies regarding benefits due or over-payments. The Department monitors each child and files the necessary forms to maintain a child's eligibility for OASDI and SSI benefits. JA 196, ¶¶ 14-16; PA at 64-66, ¶¶ 63-67. The Department also complies with SSA's strict reporting and accounting requirements. JA 141-42, ¶¶ 13-16; Pet. App. 67, ¶¶ 71-73.

5. Although the Department pays the cost of foster care, that is not primarily an obligation of the state. Foster care is a form of public assistance, and the Washington Legislature has declared that it is the "public policy [of Washington] that children shall be maintained from the resources of responsible parents, thereby relieving, at least in part, the burden presently borne by the general citizenry through welfare programs". Wash. Rev. Code § 74.20A.010, Pet. App. 255. As required by federal law, the Department actively enforces parental child support obligations for children in foster care and these funds are used to pay for the cost of care. JA 129-133.

In addition to requiring parents to pay for the care of their children, the Department is authorized to use OASDI and SSI benefits to pay for a child's current care. If no guardian for a child's estate has been appointed, the Secretary of the Department

[4] The Joint Appendix contains samples of the individual accounts of five foster children showing when the Department received benefit payments and when it used those payments to pay for the cost of care. JA 215-19, 228-69, 314-17, 323-33.

(Secretary) is authorized by state statute to act as representative payee for children in foster care, and he "may apply such funds against the amount of public assistance otherwise payable to such [foster child]". Wash. Rev. Code § 74.13.060(2), (5), Pet. App. 253, 254. Under a regulation adopted by the Secretary, if "a child in foster care is entitled to financial benefits the income received shall be used on behalf of the child to help pay for the cost of foster care received". Wash. Admin. Code § 388-70-069(1), Pet. App. 257.[5]

6. The Department does not usually purchase food, clothing, shelter, and other services directly. Rather, they are purchased by the foster care provider, who is then paid by the Department. JA 193, ¶ 7; Pet. App. 55, ¶ 25. Every month the Department generates a report of how much it has paid to the foster care provider for each child. The Department compares this amount to the amount in the child's individual benefit account. If the amount in the trust fund account is equal to or less than the entire cost of foster care, then trust fund proceeds are used to reimburse the Department – unless the Department elects to forgo reimbursement so funds can be used to meet a child's special needs beyond what foster care normally provides. JA 138-39, ¶¶ 8-9; Pet. App. 56-57, ¶¶ 27-32.

Social security benefits seldom cover all of the actual cost of foster care. A sample of representative

[5] Wash. Admin. Code § 388-70-069 was repealed in April 2001, but was replaced with a functionally similar provision, Wash. Admin. Code § 388-25-0210. Pet. App. 257, 256.

accounts illustrate this point.[6] Between 1997-1999, for example, the Department paid $30,097 for the care of Nacole B. and applied only $7,912 in social security benefits to pay for her care.[7] During this period, the cost of foster care for Jasmine C. was $15,681, and the amount of social security reimbursed was $7,189.[8] For Denita S., the cost of care was $19,240, and the amount of social security benefits applied to pay for care was $3,529.[9]

Typically, there is a two month delay between the time the Department receives a benefit and the time it uses the benefit to pay for care. However, despite this lag, the benefit is used to pay for care provided in the month for which the benefit was granted. That is, a benefit recovered for January generally would be used by the Department two months later, in March, to cover the cost of care provided in January.[10] Sometimes there is a delay in

[6] The Joint Appendix contains records for four foster children, with the total amount of foster care paid by the Department between 1997 and 1999. JA 392-402.

[7] *Compare* JA 216-19 (foster care reimbursed 8/5/97 through 12/01/98) *and* JA 395.

[8] *Compare* JA 232-34 (foster care reimbursed 3/17/97 through 5/15/98) *and* JA 398.

[9] *Compare* JA 315-17 (foster care reimbursed 11/14/97 through 4/2/99) *and* JA 402.

[10] For example, on 10/8/97 Denita S. received an SSI benefit in the amount of $599 for the month of September 1997. On 11/05/97 she received another payment of $599 for October 1997. On 11/14/97 the Department used $599 to pay for the care she received in September 1997. JA 315. This payment did not cover the actual cost of her care for the month of September, which was $3,000. JA 400-01 (payments for 9/4/97 to 9/30/97).

granting benefits – for example, if benefits are initially denied and the Department successfully appeals. In that case, SSA grants retroactive benefits, and the Department uses those benefits to pay for care, but only for the months for which the benefits were granted.[11]

7. The Department's social workers also monitor foster children to determine if they have any special needs such as computers, toys, athletic equipment, and orthodontics. The social worker can request that the child's social security benefits be used to pay for these special needs. JA 139, § 9; 195, § 11; Pet. App. 57-58, ¶¶ 34-37. In some cases, the Department will use benefits to pay for special needs instead of using the benefits to pay for the cost of foster care. The Department may also forgo paying for foster care to conserve benefits for a time prior to a child's emancipation so that the child will have funds for the transition to independent living. Pet. App. 57, §§ 31-32; JA 140, ¶ 10; 150-51, 165, 168, 171-72, 178, 319-22. Any funds that are not used to pay for foster care or special needs are deposited in an interest bearing account, and the interest earned is credited to the child's trust fund

[11] For example, Nacole B. entered foster care in February 1997. JA 392. On 7/23/97 she received 5 SSI payments of $491.55 for a total of $2457.75. The benefits were for the months of March through July 1997. On 8/5/97 the Department used $1966.20 to pay for care. Even though she had been in foster care for 6 months – since February – the Department only used the funds to pay for care provided in the four months of March through June. JA 216. The payment of $1966.20 did not cover the actual cost of care for March through June, which was $8,119. JA 392-93 (payments for 3/1/97 through 6/30/97).

account. JA 140, ¶ 11.[12] These funds may be used for increased foster care services or special needs.

8. All of the social security benefits received by the Department are used to pay for the beneficiary's care or special needs or put into savings for the beneficiary. Pet. App. 56-58, ¶¶ 27-37. None of the funds are used to pay the Department's administrative expenses. This is so despite the fact that the Social Security Act permits a representative payee to use benefits to offset administrative expenses. The amount is limited to the "lesser of 10 percent of the monthly benefit involved, or $25.00 per month". 42 U.S.C. §§ 405(j)(4)(A)(i)(I)-(II), Pet. App. 166-67; 1383(a)(2)(D)(i)(I)-(II), Pet. App. 186-87. State law provides that the Secretary shall serve as payee "without compensation of such moneys and other funds of any person which may come into the possession of the secretary during the period such person is placed with the department". Wash. Rev. Code § 74.13.060, Pet. App. 253.

C. Procedural History

1. Danny Keffeler was initially placed in foster care by his mother under a voluntary placement agreement. JA 96. After Danny's mother was killed in an accident, the Okanogan County Superior Court appointed Danny's grandmother, respondent Wanda Pierce, guardian of his estate. Although Mrs. Pierce was appointed his guardian,

[12] For example, the account of Jennifer F. reflects deposits to savings on 8/30/89 ($300) (JA 239) and 11/27/89 ($115.40) (JA 240). The account also shows the interest received. JA 270-72.

the court found that Danny was dependent and left him in foster care in the custody of the Department.

Danny became eligible for OASDI benefits when his mother died, and Mrs. Pierce was appointed representative payee to receive the benefits. JA 99. Subsequently, the Commissioner removed Mrs. Pierce and appointed the Department payee. The Department served in this capacity for about two years and used his OASDI benefits to help pay for the cost of Danny's care. Mrs. Pierce objected to her removal as Danny's payee, and she was ultimately reinstated. JA 77-85

2. In 1996, Mrs. Pierce brought an action against the Department on behalf of the Estate of Danny Keffeler to recover the social security benefits the Department used to pay for Danny's care during the time when the Department was his representative payee. The action was also brought on behalf of a class of foster children in the Department's care who receive social security benefits. The complaint alleged that the Department's use of social security benefits to pay for the cost of care violated the Social Security Act's anti-attachment provision, 42 U.S.C. § 407(a) (JA 9-22).

In 1998, the trial court granted summary judgment to the plaintiffs, concluding that the Department's use of OASDI and SSI benefits to pay for current care violated 42 U.S.C. § 407(a). The court enjoined the Department from using OASDI and SSI benefits to pay for the cost of a child's foster care and "from in any way administering the funds to offset the State's cost of maintaining a child in foster care". Pet. App. 117, ¶ 2.3. The court also

ordered the establishment of a fund to pay individual claims by class members. Pet. App. 118, ¶¶ 4.1-4.2.[13]

3. The Department appealed to the Washington Court of Appeals, which certified the case to the Washington Supreme Court.[14] On October 11, 2001, the Washington Supreme Court issued a divided decision affirming the trial court.

The five-justice majority began by observing that § 407(a) "specifically protects social security benefits from transfer, assignment, execution, levy, attachment, garnishment, and other legal process". Pet. App. 18. But the majority did not undertake an analysis of the phrase "other legal process", nor of any of the other terms used in the statute. Rather, the court determined, "the critical question" in this case is whether the Department "acts as a creditor" when it "reimburses itself for foster care costs out of the foster children's benefits". Pet. App. 19-20.

Whether the Department is a "creditor" for these purposes, the court went on to hold, is not

---

[13] The trial court separately awarded Danny Keffeler $4,998, for benefits the Department used to pay for Danny's care while the Department was his payee. Pet. App. 120, ¶ 6.1. The actual cost of Danny's care between June 1991 through March 1995 was $27,833. JA 76. The total amount the Department spent on Danny's care exceeded $43,000. JA 97.

[14] The Department did not appeal the judgment in favor of Danny Keffeler. As a matter of state law, the Department was not authorized to be Danny's payee because his grandmother, Wanda Pierce, had been appointed guardian of his estate. *See* Wash. Rev. Code § 74.13.060(5) (Pet. App. 254) ("appointment of a guardian for the estate of such person shall terminate the secretary's authority as custodian of said funds").

affected by its status as a representative payee. Though it acknowledged some factual dissimilarities (Pet. App. 20), the court relied primarily on decisions by this Court involving efforts by states that are *not* representative payees to use the legal system to obtain the rights to social security benefits.

Based on its analysis of those decisions, the majority held that "reimbursement is barred by § 407(a) because despite [the Department's] status as representative payee it performs the role of creditor when it takes the foster child's [benefits] to reimburse itself for moneys spent on the child". Pet. App. 25.

Three Justices joined an opinion concurring in part and dissenting in part. These Justices dissented from the majority's holding that § 407(a) prohibits the Department from using social security benefits to pay for current care (Pet. App. 32), rejecting the majority's reliance on cases that do not involve "the expenditure of social security benefits by a state that was designated as a representative payee" (Pet. App. 36). These justices concurred in part only insofar as they believed that the Department had used social security benefits to pay for "past due" foster care expenses, a practice they concluded was impermissible. Pet. App. 32.

4. The Washington Supreme Court denied the Department's timely motion for reconsideration on December 14, 2001. On January 22, 2002, the Department requested a stay of the injunction from the Washington Supreme Court. The request for a stay was denied the same day. Pet. App. 143. On January 28, 2002, the Department filed an

Application for a stay with Justice O'Connor as the Circuit Justice for the Ninth Circuit. On January 29, 2002, Justice O'Connor issued a temporary stay. Pet. App. 142. After the Solicitor General filed an amicus brief in support of the stay, the Court granted the stay on March 13, 2002. JA 8. The Department filed a petition for a writ of certiorari March 14, 2002, and the petition was granted May 28, 2002.

SUMMARY OF ARGUMENT

The Washington Supreme Court made a fundamental mistake in analyzing the issue in this case. According to the court, the "crucial question" in this case is whether "DSHS acts as a *creditor* when it reimburses itself for foster care costs out of the foster children's" social security benefits. Pet. App. 19-20 (emphasis in original). This characterization of the crucial question is erroneous. The text of § 407(a) makes no reference to creditors, and as this Court explained in *Philpott v. Essex County Welfare Board*, 409 U.S. 413, 417 (1973), "§ 407 does not refer to any claim of creditors; it imposes a broad bar against the use of legal process to reach social security benefits". Thus, the question is not whether the Department acts as a creditor. The crucial question is whether following the statutes and regulations governing the appointment of a representative payee and the payee's use of benefits to pay for the beneficiary's current care constitutes an "execution, levy, attachment, garnishment, or other legal process" banned by § 407(a). The answer to this question is no. Social security statutes and regulations authorize the Department, acting as representative payee, to use benefits to pay for a beneficiary's current maintenance. Section 407 does not ban what

these other statutes and regulations authorize. Accordingly, the decision below should be reversed.

In reaching its conclusion, the court below ignored the text of the social security statutes and regulations. Instead, it appeared to base its decision on its conclusion that foster children would be better off with a private representative payee. Even if this were appropriate analysis – which it is not – the court's conclusion is wrong. In every state government agencies perform the function of representative payee for foster children. Brief Of The States Of Florida, et al., As Amici Curiae In Support Of Petitioners, *State of Washington v. Guardianship Estate of Danny Keffeler*, Supreme Court, No. 01-1420, filed April 2002, at 1. This is a vital function. As the amici curiae brief filed by the Children's Defense Fund, Catholic Charities, USA, the Child Welfare League of America and the Alliance for Children and Families explains, if it were not for the effort of these state agencies, the disabilities of many children might go unrecognized, and they would never be determined eligible for – or actually receive benefits. Simply put, many of these children have no relative or friend to apply for benefits or act as representative payee. The state agencies willingness to serve as payee is essential to these children receiving benefits. Brief of Children's Defense Fund, et al., As Amici Curiae In Support Of Petitioners, *State of Washington v. Guardianship Estate of Danny Keffeler*, Supreme Court, No. 01-1420, filed April 2002, at 15.

ARGUMENT

A. Social Security Statutes And Regulations Expressly Authorize The Department, Acting As Representative Payee, To Use Benefits For The Beneficiary's Current Maintenance

1. The regulatory framework that governs this case is straight forward and expressly authorizes the practices at issue here. First, the Commissioner is authorized to appoint a representative payee to receive social security benefits on behalf of a qualified individual when the Commissioner "determines that the interest of [the] individual . . . would be served thereby". 42 U.S.C. §§ 405(j)(1)(A), Pet. App. 157; 1383(a)(2)(ii)(I), Pet. App. 178. Acting under this authority, the Commissioner appointed the Department representative payee for eligible foster children in its care.

Second, it is the responsibility of a representative payee to:

> "Use the payments he or she receives only for the use and benefit of the beneficiary in a manner and for the purposes he or she determines, under the guidelines in this subpart, to be in the best interests of the beneficiary[.]" 20 C.F.R. §§ 404.2035(a), Pet. App. 213; 416.635(a), Pet. App. 236.

Third, the Commissioner's regulations, which explain precisely how representative payees may and should use social security benefits, expressly permit use for the current maintenance of the beneficiary. Under 20 C.F.R. § 404.2040(a)(1), payments "used for

the beneficiary's current maintenance" are deemed to be used for "the use and benefit of the beneficiary". Pet. App. 214. *See also* 20 C.F.R. § 416.640(a), PA at 237. The regulation goes on to provide that current maintenance "includes cost incurred in obtaining food, shelter, clothing, medical care, and personal comfort items" (20 C.F.R. §§ 404.2040(a)(1), Pet. App. 214; 416.640(a), Pet. App. 237) – precisely the costs for which the Department uses the social security benefits in question.

In sum, the Department's appointment as representative payee and its use of the benefits to pay for current maintenance are expressly authorized by social security statutes and regulations.

2. Moreover, that use is entirely consistent with the statutory purposes of the OASDI and SSI programs. This Court has stated that OASDI benefits for dependants, such as children, are "intended to provide persons dependent on the wage earner with protection against the economic hardship occasioned by loss of the wage earner's support". *Califano v. Jobst*, 434 U.S. 47, 50 (1977). Similarly, the purpose of SSI benefits is "to assure a minimum level of income for people who are age 65 or over, or who are blind or disabled and who do not have sufficient income and resources to maintain a standard of living at the established Federal minimum income level". The Department's use of the benefits to cover the cost of foster care furthers these purposes; barring the use of benefits would defeat them.

B. Section 407 Does Not Bar A Representative Payee From Using Benefits To Pay For Current Maintenance

1. The decision below holds that § 407(a) bars the Department, acting as representative payee, from using social security benefits to pay for a beneficiary's current maintenance. That holding is wrong. By its terms, § 407(a) has no bearing at all on the use of social security benefits by a representative payee.

Section 407(a) provides that "none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process". Pet. App. 170. That provision plainly contemplates the use of compulsory legal process to seize benefits without the consent of the payee. Even if, as some lower courts have held, § 407(a) should be read broadly to reach beyond formal judicial process, it is by its terms limited to efforts by third parties to gain access to benefits through some coercive process. *See, e.g., Crawford v. Gould*, 56 F.3d 1162, 1167 (9th Cir. 1995) (extending § 407(a) to a "resort to express or implied threats or sanctions"). It has no sensible application to circumstances like these involving a voluntary decision by a duly designated payee to use benefits in a manner expressly approved by regulation.

It is obvious – and not disputed by the court below – that the Department's use of benefits to pay for current maintenance does not constitute an execution, levy, attachment, or garnishment. These are legal terms of art, describing particular formal legal procedures by which property is seized. The

Department, on the other hand, does not seize social security benefits, by these or any other procedures – it simply received them, as a duly appointed representative payee.

The only real question in this case – unaddressed by the court below – is whether the appointment of the Department is legal process within the meaning of § 407(a). A process must share the characteristics of those specifically identified – execution, levy, attachment, garnishment – which means, at a minimum, that it must involve some effort to obtain benefits through compulsion. There is no such compulsion here. The Department engages in no coercive activity or process in order to use children's social security benefits to pay for some of the costs of their current maintenance. Under 20 C.F.R. §§ 404.2040 and 426.640, it does no more than use funds already in its possession in accordance with express regulatory authorization.

In concluding that § 407(a) does prohibit the practice at issue here, the court below failed to engage in any meaningful analysis of the statutory text. Instead, it ruled almost exclusively on two of this Court's cases considering the application of § 407(a), *Philpott v. Essex County Welfare Board*, 409 U.S. 413 (1973), and *Bennett v. Arkansas*, 485 U.S. 395 (1988). In *Philpott*, the Court applied § 407(a) to bar a state lawsuit to reach social security benefits in an individual bank account under an agreement to reimburse. In *Bennett*, the Court applied the statute to bar a court action by a state seeking to attach social security benefits under a statute that authorized the state to seize a prisoner's property or estate to help defray the cost of maintaining the

prison system. Critically, in neither case was the state a representative payee appointed by the Commissioner to receive social security payments – which meant that in both cases, the state was required to use formal legal compulsion in an effort to gain access to the benefits at issue. Though the court below noted "some factual dissimilarities between *Philpott* and *Bennett*, on the one hand, and this case on the other, it failed to appreciate that application of § 407(a) turns entirely on this distinction.

By contrast, the lower courts have easily concluded that § 407(a) is not implicated when a state appointed representative payee uses social security benefits to defray the costs of state-provided care. In *Mason v. Sybinski*, 280 F.3d 788 (7th Cir. 2002), for example, the Seventh Circuit held that a payee's use of benefits to pay for the current maintenance of beneficiaries in a state hospital did not violate § 407(a) because "no attachment or legal process took place. A properly appointed representative's responsible management of a Social Security recipient's benefits cannot amount to 'other legal process,' regardless of whether that payee is an arm of the state." *Mason*, 280 F.3d at 792-93. In other words, § 407(a) "was not intended to outlaw a procedure expressly authorized by the Social Security Administration's own regulations". *Id.* at 793.

The Eighth Circuit reached the same conclusion in *King v. Schafer*, 940 F.2d 1182 (8th Cir. 1991), *cert. denied sub nom. Crytes v. Schafer*, 502 U.S. 1095 (1992), holding that "other legal process" does not include appointment of a representative payee who uses benefits to pay for current

maintenance. "We cannot believe Congress contemplated this result in enacting § 407(a), particularly when this result would be contrary to another provision of the Social Security Act: § 405(j), providing for the appointment of representative payees." *King*, 940 F.2d at 1185. *See also C.G.A. v. Alaska*, 824 P.2d 1364 (Alaska 1992) (same); *Ecolono v. Division of Reimbursements of the Department of Health & Mental Hygiene*, 769 A.2d 296, 309 (Md. App. 2001) ("the fact that a State as representative payee uses current benefits for current maintenance without threats, coercion, or misrepresentation does not involve 'legal process').

2. Section 407(a) should properly be read together with 42 U.S.C. §§ 405(j) and 1383(a)(2)(A)(ii)(I) which authorize the Commissioner to appoint representative payees, including state agencies when no other qualified payee is available. Instead of violating § 407(a), the Department's use of social security benefits actually implements a carefully crafted federal statutory plan to appoint responsible representative payees for needy children and ensure that benefits are properly used. It is illogical to conclude that § 407(a) prohibits what §§ 405(j) and 1383(a)(2)(A)(ii)(I) permit, especially when the provisions are easily harmonized. Section 407(a) protects benefits from execution, levy, attachment, garnishment, or other legal process by a person who is not a representative payee. When a representative payee is appointed, it becomes the Commissioner's job to ensure that the payee is using the benefits properly.

The court below seems to have been under the misimpression that this is an empty legal technicality, used only to circumvent statutory

intent. That is incorrect. There is an important practical distinction between a mere creditor and a state acting as a representative payee. Once a state agency becomes a representative payee, it – unlike creditors – is subject to the supervision of the Commissioner. The Commissioner investigates, appoints, and monitors representative payees to ensure that benefits are properly used. The Commissioner's regulations provide that a payee may use benefits for the beneficiary's current care. 20 C.F.R. §§ 404.2035, Pet. App. 213; 416.635(a), Pet. App. 236. The representative payee must report to the Commissioner to account for the use of the benefits. 42 U.S.C. §§ 405(j)(3)(A)-(B), Pet. App. 165; 1383(a)(2)(C)(i)-(ii), Pet. App. 185-86. If the Commissioner finds that a representative payee has misused benefits, the law requires the Commissioner to "promptly revoke certification for payment of benefits to such representative payee . . . and certify payment to an alternative representative payee". 42 U.S.C. §§ 405(j)(1)(A), Pet. App. 157; 1383(a)(2)(A)(iii), Pet. App. 179. Moreover, a representative payee is subject to criminal penalties for misusing the benefits. 42 U.S.C. § 408(a)(5), Pet. App. 172. 42 U.S.C. § 1383a(a)(4). The Commissioner has a strong incentive to fulfill these oversight responsibilities. In cases "where the negligent failure of the Commissioner . . . to investigate or monitor a representative payee results in misuse of benefits by the representative payee, the Commissioner . . . shall certify for payment to the beneficiary or the beneficiary's alternative representative payee an amount equal to such misused benefits". 42 U.S.C. § 405(j)(5), JA 168; 42 U.S.C. §1383(a)(2)(E), JA 188.

In other words, the concerns identified in cases like *Philpott* and *Bennett* arise when states attempt to gain control over social security benefits without subjecting themselves to supervision by the Commissioner. Cases like this one are entirely different: once the Department is appointed representative payee and made subject to the Commissioner's oversight, the Commissioner stands in a position to ensure that benefits are used only in accordance with statutory intent.

Section 407(a) makes perfect sense when considered in tandem with the provisions regarding representative payees. Section 407(a) does not prohibit representative payees from using benefits for current maintenance. Instead, it is a tool that allows representative payees to conserve social security benefits for their intended beneficiary. The SSA explained the interaction of § 407(a) and the representative payee provisions in a response to comments when amending its regulations in 1982. According to SSA: "Whenever there is a use of legal process to compel payment of a past indebtedness which jeopardizes the beneficiary's current maintenance, including the satisfaction of his or her reasonably foreseeable future needs, *it is the representative payee's responsibility to invoke, on the beneficiary's behalf, the protection of section [407(a)]*". 47 Fed. Reg. 20468-01, at 30471-71. In other words, § 407(a) allows the representative payee to ensure that benefits are used for current maintenance – just as the Department is doing here.

3. It is not surprising that the holding below – that § 407(a) prohibits a representative payee from using social security benefits for current maintenance – finds no support in the statutory text

or regulatory scheme. That holding leads to results so illogical and insensible that there is no reason to think that Congress could have intended them.

The illogic of the decision below is apparent when its reasoning is extended to parents who serve as representative payees. The linchpin of the Washington Supreme Court's analysis is that because Washington will pay for a foster child's care itself if social security benefits are not available, it should not be permitted to deprive children of an extra benefit by using social security benefits to reimburse those costs. But this same principle would apply to *parents* who also have a legal obligation to support their children, even if there are no OASDI or SSI benefits. *See, e.g.*, Wash. Rev. Code §§ 26.20.030-.035. Thus, to paraphrase *Keffeler*: "[I]f [a parent] is appointed representative payee for a . . . child [the parent] will confiscate the child's SSI money to benefit the [parent]. However, if *anyone else* is appointed, the [parent] will bear the cost of . . . care". Pet. App. 18. Therefore, under the reasoning below, a representative payee parent may not use the benefits to pay for current maintenance.

It seems unlikely that Congress could have intended this result. For one thing, it is in tension with other provisions designed to put social security benefits in the hands of parents and family members, presumably on the theory that they can be trusted to make financial decisions in the best interest of the beneficiary. *See* 42 U.S.C. §§ 405(j)(2)(C)(iii)(I), PA at 161; 1383(a)(2)(v)(I), Pet. App. 181 (permitting relatives, who are creditors, to be appointed representative payee, if they live with the beneficiary). *See also* 20 C.F.R. §§ 404.2021(b)(1), Pet. App. 209; 416.621(b)(1), Pet. App. 234-35

(giving first preference to be appointed representative payee is a "natural or adoptive parent who has custody of the beneficiary").

It would also run contrary to the consistent lower court case law holding that parents may use social security benefits to pay for current care of children, despite the fact that the parents have the legal obligation to support their children. *See Mellies v. Mellies*, 815 P.2d 114 (Kan. 1991) (rejecting claim that a father must conserve social security benefits for the future benefit of the son rather than spending them on current maintenance); *In re the Guardianship of Nelson*, 547 N.W.2d 105 (Minn. Ct. App. 1996) (same).

Finally, any such rule might impose onerous and seemingly absurd accounting requirements on parents – requiring, for example, that they use social security benefits directly to purchase a computer for their child, rather than "reimbursing" themselves as "creditors" – when they pay their monthly credit card bills.

This may not be the result the court below intended. But the only other alternative is equally illogical and equally unsound. If, in fact, the holding below does *not* extend to parents, then the upshot is the Department, acting in a custodial capacity with respect to children in its care, may not use social security benefits to pay for current maintenance, while a parent, acting in the same capacity, may. There is no self-evident rationale for this unequal treatment – and none offered by the court below – and no reason to believe it was intended by Congress.

C. The Decision Below Should Be Reversed Because It Is Inconsistent With The Commissioner's Interpretation Of SSA Regulations, Which Are Entitled To Considerable Weight

Though the holding below rests exclusively on § 407(a), the court also suggests that the Department's use of social security benefits may be inconsistent with governing regulations, specifically the regulation requiring that benefits be used in the best interest of the beneficiary. Pet. App. 28. As shown in part A of this brief, the Department's practice is in fact expressly approved by the relevant regulations. But even if the regulations were ambiguous on this point, the Commissioner's determination that the Department's use of benefits is consistent with regulatory requirements would control.

As this Court reaffirmed just last term, an agency's interpretation of its own regulations is entitled to considerable legal leeway. *Barnhart v. Walton*, 122 S. Ct. 1265 (2002). Unless an agency interpretation is "plainly erroneous" (*Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410, 414 (1945)) or "plainly inconsistent with the wording of the regulation" (*United States v. Larionoff*, 431 U.S. 864, 872-73 (1977)) it should be accepted as correct. The court below did not purport to find the SSA's interpretation of its own regulations wanting under this very deferential standard.[15] Instead, it failed to

---

[15] The court below did not question the validity of the regulations themselves and nor have respondents. The only issue in this case is the proper interpretation of those regulations. Most specifically, the Commissioner has stated

apply the standard altogether, simply substituting its judgment for that of the agency charged with administration of the relevant programs.

The Commissioner's position on this point dates back to 1961. In that year, the Commissioner adopted 20 C.F.R. § 404.1604, which provided that payments "certified to a relative or other person on behalf of a beneficiary shall be considered as having been applied for the use and benefit of the beneficiary when they are used for the beneficiary's current maintenance". 26 Fed. Reg. 11828. Since that time, the Commissioner has consistently taken the position that payments made for current maintenance are permissible under its regulations, even when – contrary to the views of the court below – that maintenance would otherwise be provided by the state at no charge to the beneficiary.

In Social Security Ruling 66-20, for example, issued in 1966, a relative was appointed representative payee for a beneficiary confined to a hospital for criminal insanity. The hospital requested that the payee pay $50 a month for the

---

expressly, in this case, that the Department in its capacity as representative payee may use social security benefits to pay for current care consistent with regulatory requirements – including the requirement that benefits be used "in the best interest" of the beneficiary. *See* Brief For The Amicus Curiae Kenneth Apfel, Commissioner Of The United States Social Security Administration, *Guardianship Estate of Danny Keffeler v. State of Washington*, 145 Wash.2d 1, 32 P.3d 267 (2001) (No. 67680-1) (rejecting argument that Department practice fails to meet regulatory "best interest" requirement); Brief For The United States As Amicus Curiae, State of Washington v. Guardianship Estate of Danny Keffeler, U.S. Supreme Court, No. 01A557, filed February 2002.

care of the beneficiary. Under the reasoning below, it would not be in the beneficiary's best interest to pay for care that the hospital would otherwise provide without charge. But the Commissioner concluded that "it would be proper under the regulation for the representative payee of the beneficiary to use part of the benefits to meet the customary charges made by the institution". SSR 66-20, 1960-1974 Soc. Sec. Rep. Ser. 385, at *1 (1966 WL 3055 (S.S.A.)).

The Commissioner confirmed this view two years later in Social Security Ruling 68-18. This ruling involved a beneficiary in a nursing home, whose cost of care was being met by the county welfare department. The county asked the beneficiary's private representative payee to use some of her benefits to pay for her cost of care. Again, under the decision below, it would be improper to use the benefits to pay for this care already provided by the county. The Commissioner concluded to the contrary: "Although the Welfare Department is currently paying for the beneficiary's care, such Department is not in fact responsible for providing that portion which could be provided by her own income because to that extent the individual is not needy. Under such circumstances, the current maintenance needs of the beneficiary herein may not be considered to be provided for by funds other than her social security benefits." SSR 68-18, 1960-1974 Soc. Sec. Rep. Ser. 516, at *2 (1968 WL 3918 (S.S.A.)).

In sum, the SSA's longstanding and consistent position is that the Department acts within regulatory requirements when, as representative payee, it applies social security benefits to cover the

costs of current maintenance. The Washington Supreme Court erred by failing to give this position the deference to which it is entitled.

D. The Department, Acting As Representative Payee, Does Not Act As A Creditor When It Uses Benefits To Pay For A Foster Child's Care

1. The Washington Supreme Court began its analysis with the mistaken view that the crucial question in the case was whether the Department acts as a creditor. That is not the "crucial question" in this case. The term "creditor" appears nowhere in § 407(a). Based on this mistake, the court held that § 407(a), barred the Department from this use of the benefits "because despite DSHS's status as representative payee it performs the role of creditor when it takes the foster child's SSA entitlement to reimburse itself for moneys spent on the child". Pet. App. 25. The linchpin of the Washington Supreme Court's analysis is that Washington will pay for a foster child's care itself if social security benefits are not available. In the view of the court, a "child is better off with any payee other than the state because DSHS must provide foster care under state law *regardless* of whether it receives a reimbursement". Pet. App. 19 (emphasis in original). Thus, the court announced a broad rule that section § 407(a) prohibits a representative payee, who is responsible for paying for a beneficiary's current care, from using social security benefits for that purpose.

2. The court's analysis is fundamentally flawed. The conclusion that a child is better off with any payee other then the state is based on the mistaken notion that if the state is paying for a beneficiary's current care it is not in the beneficiary's interest to use social security benefits to pay for that care. The Commissioner rejected this interpretation in Social Security Rulings 66-20 and 68-18. In both cases the Commission concluded that it was proper for the representative payee to use social security benefits to pay for the beneficiary's care – even though the government was already paying for that care. *See supra* p. 32-33.

It is true that § 407(a) prevents the Department from bringing suit to compel a private representative payee to pay for a beneficiary's current care. But if a private payee refuses to use the benefits to pay for current care, the Commissioner has an obligation to remove that payee and choose an alternate payee, who will make proper use of the benefits. This action by the Commissioner is seldom necessary since private payees do pay social security benefits to the state to help offset the cost of care. JA 127, ¶ 14.

The Washington Supreme Courts analysis on this point also ignores the reality of trying to protect abused and neglected children. The Court's reasoning appears to assume that there are numerous private individual's and organizations waiting to act as representative payee for foster the children. The reality is otherwise. As the Children's Defense Fund, Catholic Charities, USA, the Child

Welfare League of America and the Alliance for Children and Families explained in their amicus brief supporting the Department's petition, many children have no relative, guardian, or close friend to act as representative payee. States and other governments who undertake this responsibility perform a vital function. Without this effort many children with disabilities would never be determined eligible for – or actually receive benefits. Brief of Children's Defense Fund, et al., As Amici Curiae In Support Of Petitioners, *State of Washington v. Guardianship Estate of Danny Keffeler*, Supreme Court, No. 01-1420, filed April 2002, at 15. State or local governments in every state undertake the representative payee function for foster children and use the benefits to help pay for the children's cost of care. Brief Of The States Of Florida, et al., As Amici Curiae In Support Of Petitioners, *State of Washington v. Guardianship Estate of Danny Keffeler*, Supreme Court, No. 01-1420, filed April 2002, at 1. Indeed, social service agencies are last on the Commissioner's list of preference for appointment as representative payee. Thus, when a state agency is appointed it is usually because there is no one else willing or able to undertake the responsibilities of payee.

3. The Washington Supreme Court's conclusion that the Department is a creditor is also in error. The court below not only asked the wrong question, it reached the wrong answer. The Department is not a creditor in any sense meaningful here. When a parent provides care for a

child, it does not create a creditor/debtor relationship with the child by reason of that care. The same is true of the Department. It provides foster care even if a child receives no social security benefits. Moreover, social security benefits seldom cover the actual cost of foster care.[16] Yet the Department does not send a bill to the child for the additional amount of unreimbursed foster care – as would be appropriate in an actual creditor/debtor relationship.

4. The court below based its conclusion that the Department is a creditor on the Department's use of the term "reimbursement". ("Furthermore, the bare logic of reimbursement also implies a creditor-debtor relationship." Pet. App. 26.) But the Department only reimburses itself in an accounting sense in that it first pays for care and then uses the OASDI and SSI benefits later. Pet. App. 61, ¶ 54. For example, in February the Department pays providers for the child's January foster care expenses. After the Department pays the providers it determines how much of the social security benefits will be used to reimburse the Department for the care provided. Pet. App. 56, ¶ 28. For example, in March, after the accounting is performed, the Department applies the January benefit for the care provided in January. However, the result would be exactly the same if the Department sent the January benefit to the foster parent in January, along with a second check to make up the difference between the social security

---

[16] For example, between 1997-1999 the Department paid $30,097 for the care of Nacole B. and applied only $7,912 in social security benefits to pay for her care. *Supra* n.7, p. 13.

benefit and the actual cost of foster care. In this situation, the child receives the social security benefits and the Department would pay out fewer state dollars – but there would be no reimbursement.[17]

5. There is one important practical difference between prepayment and reimbursement. An accounting system based on reimbursement helps ensure that social security benefits are properly used. For example, if the Department prepays January care and then the foster child moves to a group home halfway through the month, there will be an overpayment to the foster parents. In that case, the foster parents would not be entitled to keep the full social security benefits, and the Department would have to obtain a refund from the foster parents so the benefits could be provided to the new caregiver. A reimbursement system more effectively ensures that the Department pays only for care that has actually been provided. This is particularly important when dealing with social security benefits because of the Commissioner's strict accounting standards.

---

[17] The majority also cites Wash. Rev. Code § 74.13.060 to support its notion that reimbursement establishes a creditor-debtor relationship. Pet. App. 26. In fact, the statute provides for reimbursing public assistance "expended on behalf of said *person during the period for which the benefits*, payments, funds or *accruals were paid*". Wash. Rev. Code § 74.13.060(2), Pet. App. 26 n.15, 253 (emphasis added). Thus, January benefits go to pay the January cost of care which, as described above, is exactly how the Department operates.

CONCLUSION

For the foregoing reasons the judgement of the Supreme Court of Washington should be reversed.

Respectfully submitted,

CHRISTINE O. GREGOIRE
Attorney General

Walter Dellinger
Pamela Harris
O'Melveny & Myers

555 13th Street NW
Washington, D.C. 20004
202-383-5300

William Berggren Collins
Sr. Assistant Attorney General
Counsel of Record

1125 Washington Street SE
Olympia, WA 98504-0100
360-753-6245

Counsel For Petitioners

Supreme Court, U.S.
FILED
OCT 4 2002

No. 01-1420

IN THE

Supreme Court of the United States

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, *et al.*,

Petitioners,

v.

GUARDIANSHIP ESTATE OF DANNY KEFFELER, by WANDA PIERCE, Guardian, and other persons similarly situated,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF FOR RESPONDENTS

RICHARD B. PRICE
P.O. Box 1687
Omak, WA 98841
(509) 826-5110

RODNEY M. REINBOLD
P.O. Box 751
Okanogan, WA 98840
(509) 422-3610

TERESA WYNN ROSEBOROUGH
Counsel of Record
DAVID I. ADELMAN
DEBORAH M. DANZIG
JENNIFER N. IDE
JASON C. KIRKHAM
SUTHERLAND ASBILL
& BRENNAN LLP
999 Peachtree Street, N.E.
Atlanta, GA 30309-3996
(404) 853-8000

Attorneys for Respondents

176565

BEST AVAILABLE COPY

QUESTIONS PRESENTED

Whether the Washington Department of Social and Health Services is obligated when it receives a Social Security benefit payment on behalf of a child in its care to expend those funds for that child's exclusive use and benefit and in the best interest of that child, in accordance with § 405(j), or may instead use the benefit payment to reimburse itself for the cost of services provided to the child under a separately funded program, without regard to whether the reimbursement payment is in the best interest of the child.

Whether the Washington Department of Social and Health Services' cost recovery program, which assigns future Social Security benefits to repay state foster care expenditures and subjects the benefits to a legal process with the same objective as a levy, execution, garnishment or attachment, violates § 407(a) of the Social Security Act.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF CITED AUTHORITIES	vi
TABLE OF EXHIBITS	xiii
STATEMENT	1
A. INTRODUCTION	1
B. BACKGROUND	2
1. Respondent Class	3
2. Washington State's Foster Care Program	3
3. Foster Care Funding	4
4. DSHS's Cost Recovery Program	6
C. ADMINISTRATIVE PROCEEDINGS	10
D. PROCEDURAL HISTORY OF THIS ACTION	11
E. WASHINGTON SUPREME COURT'S RULING AFTER REMAND	12
F. PROCEEDINGS IN THIS COURT	17

Contents

	Page
SUMMARY OF THE ARGUMENT	18
ARGUMENT	20
A. SECTION 405(j) REQUIRES DSHS TO ACT IN THE BENEFICIARIES' BEST INTEREST AND PROHIBITS SELF DEALING	20
1. DSHS's Cost Recovery Program Cannot Be Justified as a Use of the Benefit by a Representative Payee for "Current Maintenance."	22
a. DSHS uses the benefits to reimburse for past care and services and to repay programmatic expenses.	23
b. At intermittent intervals, DSHS sweeps the children's accounts of accumulated benefits.	24
c. Double dipping – DSHS "reimburses" itself for costs paid from federal funds or already reimbursed by the child's parent.	24
2. DSHS Is Barred by State Law from Using the Discretion Required of a Representative Payee.	26
3. A Proper Administration of Benefits Would Require DSHS to Consider the Child's Current and Future Needs Before Contemplating Reimbursement.	26

Contents

Page

4. The Washington Supreme Court Properly Questioned Whether Repayment of Public Assistance Could Ever Be in a Child's Best Interest 30

B. WASHINGTON'S COST RECOVERY PROGRAM VIOLATES § 407(a). 31

1. Section 407(a) Applies with Equal Force to Representative Payees. 33

2. Washington's Statutes and Regulations, Which Compels Use of Respondents' Social Security Benefits to Reimburse Foster Care Costs, Constitute "Legal Process" Forbidden by § 407(a). 35

a. The "Legal Process" at issue is the State's reimbursement scheme. ... 36

b. Section 407(a) prohibits more than "judicial process." 38

c. Section 407(a) prohibits Washington's scheme to reimburse the cost of providing state mandated public assistance. 40

3. The Department Violates § 407(a) When It Assigns Respondents' Social Security Benefits to Reduce the Cost of Providing Foster Care in Washington. .. 43

Contents

Page

C. THE POSITION ADVANCED BY SSA IN THIS LITIGATION IS NEWLY CRAFTED AND IS NOT ENTITLED TO DEFERENCE 44

CONCLUSION 49

TABLE OF AUTHORITIES

CASES

In re Barron, 85 B.R. 603 (Bankr. N.D. Ala. 1988) 32

Bennett v. *Arkansas*, 485 U.S. 395 (1988) . 36, 40, 41, 42

Boulter v. *Boulter*, 930 P.2d 112 (Nev. 1997) 43

Bowen v. *Georgetown Univ. Hosp.*, 488 U.S. 204 (1988) 47

Braam v. *Washington DSHS*, No. 98-2-01570-1, Whatcom County Superior Court, Injunction Order (May 31, 2002) 4

Brinkman v. *Rahm*, 878 F.2d 263 (CA9 1989) 39

In re Buren, 6 B.R. 744 (M.D. Tenn. 1980) 32

In re Buren, 725 F.2d 1080 (CA6 1984) 32

C.G.A. v. *Alaska*, 824 P.2d 1364 (Alaska 1992) ... 37

Chevron, U.S.A., Inc. v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) 44, 47

Connecticut Nat'l Bank v. *Germain*, 503 U.S. 249 (1992) 33, 38

Crawford v. *Gould*, 56 F.3d 1162 (CA9 1995) 39, 40

Cited Authorities

Ecolono v. *Division of Reimbursements of the Dep't of Health & Mental Hygiene*, 769 A.2d 296 (Md. App. 2001) 37

Ellender v. *Schweiker*, 575 F. Supp. 590 (S.D.N.Y. 1983) 35, 39, 43

Estate of Keffeler v. *Department of Social & Health Servs.*, 32 P.3d 267 (Wash. 2001) ..... *passim*

Horowitz v. *Apfel*, 143 F. Supp. 2d 240 (E.D.N.Y. 2001) 3

King v. *Schafer*, 940 F.2d 1182 (CA8 1991) 37

Mason v. *Sybinsky*, 280 F.3d 788 (CA7 2002) 37

Mellies v. *Mellies*, 815 P.2d 114 (Kan. 1991) 42

National R.R. Passenger Corp. v. *Morgan*, 122 S. Ct. 2061 (2002) 47

Nelson v. *Heiss*, 271 F.3d 891 (CA9 2001) 39

In re the Guardianship of Nelson, 547 N.W.2d 105 (Minn. Ct. App. 1996) 42

Philpott v. *Essex County Welfare Bd.*, 409 U.S. 413 (1973) 35, 36, 38, 40, 41, 42

Rose v. *Rose*, 481 U.S. 619 (1987) 40

Skidmore v. *Swift & Co.*, 323 U.S. 134 (1944) 46

Cited Authorities

	Page
Tidwell v. *Schweiker*, 677 F.2d 560 (CA7 1982)	39
Tom v. *First Am. Credit Union*, 151 F.3d 1289 (CA10 1988)	39
United States v. *Devall*, 704 F.2d 1513 (CA11 1983)	32
United States v. *Mead Corp.*, 533 U.S. 218 (2001)	46, 47
United States v. *Ron Pair Enters.*, 489 U.S. 235 (1989)	38

STATUTES

18 U.S.C. § 3613(a) (2002)	35
26 U.S.C. § 86(a)(1) (2002)	35
26 U.S.C. § 871(a)(3)(A)	35
26 U.S.C. § 6334(c) (2002)	35
31 U.S.C. § 3716(c)(3)(A)(i) (2002)	35
42 U.S.C. § 405(j) (2002)	*passim*
42 U.S.C. § 405(j)(1)(A) (2002)	21
42 U.S.C. § 405(j)(2)(C)(i) (2002)	21
42 U.S.C. § 405(j)(2)(C)(iii)(III) (2002)	37

Cited Authorities

	Page
42 U.S.C. § 405(j)(4)(A)(i) (2002)	23
42 U.S.C. § 407 (2002)	32, 34
42 U.S.C. § 407(a) (2002)	*passim*
42 U.S.C. § 407(b) (2002)	31, 32, 34, 44
42 U.S.C. § 670 (2002)	5
42 U.S.C. § 671 (2002)	5
42 U.S.C. § 672 (2002)	5
42 U.S.C. § 673 (2002)	5
42 U.S.C. § 674 (2002)	5
42 U.S.C. § 1383(a)(2)(A)(ii) (2002)	20
42 U.S.C. § 1383(d)(1) (2002)	31
Wash. Admin. Code § 388-25-0090 (2002)	4
Wash. Admin. Code § 388-25-0120 (2002)	4
Wash. Admin. Code § 388-25-0210 (2002)	6, 26
Wash. Admin. Code § 388-70-069, *repealed by* Wash. St. Reg. 01-08-047 (Apr. 30, 2001)	6, 7
Wash. Rev. Code § 74.13.031 (2002)	3

Page

Wash. Rev. Code § 74.13.060 (2002) 6, 22

Wash. Rev. Code § 74.13.330 (2002) 4

Wash. Rev. Code § 74.20.010 (2002) 26

LEGISLATIVE MATERIALS

H.R. Conf. Rep. No. 47, 98th Cong., 1st Sess. 115 (1983), *reprinted in* 1983 U.S.C.C.A.N. 404 ... 34

H.R. Rep. No. 25(i), 98th Cong., 1st Sess. 1 (1983), *reprinted in* 1983 U.S.C.C.A.N. 219 34

H.R. Rep. No. 76-728 (1939) 20

Pub. L. No. 96-272, 94 Stat. 500 (1980) 5

Pub. L. No. 98-21, § 335(a), 97 Stat. 65 (1983) ... 31

Pub. L. No. 603, 92nd Cong., 2d Sess. (1972), 86 Stat. 1329 31

Social Security Amendments of 1939, ch. 666, § 205(j), Pub. L. No. 76-379, 53 Stat. 1360 20

ADMINISTRATIVE MATERIALS

20 C.F.R. § 404.2001(a) (2002) 21

20 C.F.R. § 404.2035 (2002) 1, 13, 14, 21, 26

20 C.F.R. § 404.2040 (2002) 27

Page

20 C.F.R. § 404.2040(a) (2002) 21, 28

20 C.F.R. § 404.2040(b) (2002) 27

20 C.F.R. § 404.2045 (2002) 28

20 C.F.R. § 404.2050 (2002) 11

20 C.F.R. § 416.110 (2002) 4

20 C.F.R. § 416.635 (2002) 21, 26, 28

20 C.F.R. § 416.640(a) (2002) 21

45 C.F.R. pt. 98 (2002) 5

45 C.F.R. pt. 99 (2002) 5

47 Fed. Reg. 30468 at 30470 (1982) 28

66 Fed. Reg. 10695 - 10697 (Feb. 16, 2001) 4

Page

OTHER AUTHORITIES

Social Security Ruling 66-20, 1960-74 Soc. Sec. Rep. Ser. 385, 1966 WL 3055 (S.S.A.) 44, 45

Social Security Ruling 68-18, 1960-74 Soc. Sec. Rep. Ser. 516, 1968 WL 3918 (S.S.A.) 44, 45

Social Security Representative Payment Program, Guide for Organizational Representative Payees 29

Brief for the United States as *Amicus Curiae*, *Philpott* v. *Essex County Welfare Bd.*, 409 U.S. 413 (1973) 30, 41

2000 Annual Report, U.S. Department of Agriculture, Center for Nutrition Policy and Promotion Misc. Pub. No. 1528-2000 4

TABLE OF EXHIBITS

Page

Exhibit A — "T-list" Of Reimbursable Expenses .. 1a

Exhibit B — Brief For The United States As *Amicus Curiae* In *Philpott* v. *Essex County Welfare Bd.* (1973) E4

Exhibit C — Excerpts Social Security Representative Payment Program, Guide For Organizational Representative Payees E23

STATEMENT

A. INTRODUCTION

As stated by Petitioners, the question presented is whether a representative payee violates the anti-alienation provisions of § 407(a) of the Social Security Act when it uses Social Security benefits to pay for current maintenance of the beneficiary. The answer to this question is "no" where a properly appointed representative payee exercises discretion in the beneficiary's best interest to pay for the current maintenance needs of the beneficiary. The Washington Supreme Court expressly acknowledged that the use of Social Security benefits "for the care and maintenance of the beneficiary, as required under 20 C.F.R. § 404.2035(a), would indeed be in the best interest of the beneficiary." (Pet. App. 28.)

The Washington Supreme Court, however, went on to say:

> but that is significantly different from using [the benefits] to reimburse the state for payments it made for the care and maintenance of the foster child – especially when that payment to the state cannot be legally compelled and, moreover, could be used or conserved for other special needs of the child.

(*Id.*) Petitioner contended below that its use of the Social Security benefits entrusted to it to reimburse state foster care costs was permitted because it was merely acting as a representative payee and expending the funds to pay current maintenance. The Washington Supreme Court accepted the legal principle that representative payees could make such use of the funds, but rejected as a factual matter Petitioner's contentions that its reimbursement scheme used the funds to pay current maintenance and was in the child's best interest.

The Washington Supreme Court determined that Washington's Department of Social and Health Services ("DSHS" or the "Department") was a representative payee in name only and that its statutory and regulatory structure and

practice was that of a creditor engaged in a cost recovery program in violation of both the anti-alienation provisions of § 407(a) of the Social Security Act and the obligations of a representative payee under § 405(j) of that Act. Longstanding rules and regulations of the Social Security Administration ("SSA") prohibit self-dealing by representative payees and emphasize that representative payees must administer the funds entrusted to them for the exclusive use and benefit and in the best interest of the beneficiary. Using the funds to reimburse a debt, or indeed to make any other payment, whether for current maintenance or otherwise, without regard to the best interest of the beneficiary is prohibited. Use of future assignments, confiscation, liens, or any other legal process by a creditor to get access to Social Security benefits, other than those offered as an expenditure made in the best interest of the beneficiary is also prohibited. The conduct of DSHS violated these prohibitions, and the Washington Supreme Court's decision rightly requires it to conform its conduct to that required by federal law. Its decision should be affirmed.

B. BACKGROUND

Danny Keffeler, now a college graduate, was an orphan in foster care in the State of Washington when this controversy arose. SSA initiated this dispute when it removed Danny's grandmother, Wanda Pierce, as his representative payee and substituted DSHS so that DSHS could use Danny's Social Security funds to reimburse foster care costs. Ms. Pierce ultimately won reinstatement after two separate Social Security Administrative Law Judges ruled that she had appropriately refused the State's demands for reimbursement of foster care costs. This class action to recover Social Security benefits wrongfully confiscated from Danny and other children in foster care ensued.

1. Respondent Class

Respondents are children in foster care who receive Social Security benefits that are paid to Washington as their representative payee. They comprise approximately 14% of the children in Washington's foster care system. The children receive two distinct types of Social Security benefits. Thirty-two percent receive benefits under Title II of the Social Security Act ("Title II" or "survivor benefits") and approximately 62% receive Supplemental Security Income ("SSI") benefits under Title XVI of the Act. Approximately 6% receive both Title II and SSI benefits. (Pet. App. 49 ¶ 7.) Although the amount received by children receiving Title II depends on their parent's benefit eligibility and varies widely, the average benefit payment to children in Washington's foster care system was about $250 per month in 2000. (Pet. App. 50 ¶ 10.) On average, foster care children receiving SSI in Washington received $505 to $520 per month in 2000. (Pet. App. 50 ¶ 10.)[1]

2. Washington State's Foster Care Program

Through DSHS, Washington provides foster care to "runaway, dependent, or neglected children." Wash. Rev. Code § 74.13.031. So that it can receive federal funding, Washington executes its foster care program in accordance with a plan approved by the Social Security Administration.

To meet its state and federal law obligations, DSHS's Children's Division ("Children's Division") recruits foster parents. Foster parents are required to provide food, clothing, shelter, and supervision and to obtain health care as needed for

1. SSI benefits are subject to a $2,000 resource limit. A child may have a "supplemental needs trust" with a spendthrift provision, however, that will allow a child's resources to exceed the $2,000 limit without threatening his eligibility. *Horowitz* v. *Apfel*, 143 F. Supp. 2d 240, 242 (E.D.N.Y. 2001). No such limitation applies to SSA benefits.

the children in their care. Wash. Rev. Code § 74.13.330; Wash. Admin. Code § 388-25-0090. At the end of each month, the State provides the foster parent with a stipend that is intended to partially reimburse the cost of providing this care. The amount of the foster care stipend is fixed and depends only on the age of the child. Wash. Admin. Code § 388-25-0120. The foster care family receives the same amount no matter how much it actually spends for the child's care. For example, the foster parent of an eight-year-old child receives a reimbursement stipend of $426/month. (Pet. App. 90.)[2]

3. Foster Care Funding

Washington's foster care program is funded through a combination of state and federal funds. Washington receives federal foster care funding primarily through Title IV-E

2. The stipend reimburses the foster family for only a portion of the true cost of providing care for the child. Congress has set the minimum income standard for a disabled child receiving SSI benefits at $715/month, almost 70% more than Washington provides to that same child. 20 C.F.R. § 416.110; 66 Fed. Reg. 10695 – 10697 (Feb. 16, 2001). The United States Department of Agriculture reports that two-parent, two-child households with a median annual income of $23,800 in 2000 spent $543 per month in direct expenditures for an 8-year-old; those with a median income of $50,600 spent $749 per month. *2000 Expenditures on Children by Families, 2000 Annual Report, U.S. Department of Agriculture, Center for Nutrition Policy and Promotion Misc. Pub. No. 1528-2000.*

DSHS implies throughout its brief that foster care provides everything a child might need and that it will not be able to find enough things on which to responsibly expend the Social Security benefits if it is not permitted to use them for reimbursement. This assertion in belied by the judicial condemnations of Washington's foster care system, which include, for example, the finding that Washington fails to provide timely mental health assessments for children in foster care or to follow recommended treatment plans. *See Braam* v. *Washington DSHS*, No. 98-2-01570-1, Whatcom County Superior Court Injunction Order (May 31, 2002). (J.A. 548.)

(the federal foster care program).[3] Title IV-E funds provided approximately 18% of Washington's total state foster care budget for fiscal 2000. (Pet. App. 70 ¶ 85.)[4] Title IV-E is an uncapped, open-ended entitlement program that reimburses eligible state programs,[5] such as Washington's, for a portion of the cost of placing children in foster care or finding adoptive homes for special needs children.[6]

Excluding Social Security benefits, over 29% of the amount Washington expends for foster care each year comes from federal funding sources. (Pet. App. 70 ¶ 85.) When Social Security benefits taken as reimbursements are taken into account, the overall federal funding of Washington's foster care program

3. The Title IV-E program was created as part of the Social Security Act by the Adoption Assistance and Child Welfare Act of 1980 ("AACWA"), Pub. L. No. 96-272, 94 Stat. 500 (1980), codified at 42 U.S.C. §§ 670-74. Additional federal funding of foster care is provided through Title XIX (Medicaid); Title IV-B subpart 2 (the Family Support and Family Preservation Services program) of the Social Security Act; and 45 C.F.R. parts 98 and 99 (the Child Care and Development Block Grant).

4. The figure for the amount of Title XIX (Medicaid) funding should be $2,614,114. (*See* Exhibit F to the Findings of Fact, Pet. App. 109.)

5. To be eligible, a state plan must meet an extensive list of statutory criteria and must be approved by the Secretary of Health, Education, and Welfare. 42 U.S.C. §§ 671-72.

6. Title IV-E provides the following matching funds: foster care maintenance payments and adoption assistance payments, 51.83% (fiscal 2000); costs of social worker training, 75%; costs of foster parent or adoptive parent training, including travel and related expenses, 75%; certain expenditures for the planning, design, development, or installation of statewide mechanized data collection and information retrieval systems, and costs associated with the operation of such systems, 50%; other child placement services and other administrative expenditures, 50%; and foster care independence program costs, to the extent they exceed related penalties, 80%.

increases from 29% to just over 42%. (Pet. App. 50 ¶ 11; 70 ¶ 85.) Alone, the Social Security benefits taken by the State as reimbursement for foster care fund nearly 13% of the State's foster care budget.

In addition to federal funds, Washington also receives child support payments from parents of some children in foster care. In 2000 Washington forecasted it would collect approximately $3.24 million in payments from the parents of children in foster care. (Pet. App. 70 ¶ 84.)

4. DSHS's Cost Recovery Program

By statute and implementing regulations, Washington mandates that the Social Security benefits it receives as representative payee be used virtually exclusively to reimburse state foster care costs. DSHS is authorized under § 74.13.060 of the Revised Code of Washington to take custody of foster children's Social Security benefits and to disburse them to meet the child's personal needs or apply them "as reimbursement . . . against the amount of public assistance expended on behalf of [the child]." The DSHS regulation requires that the first priority use of the funds must be the repayment of public assistance:

> If a child in foster care is entitled to financial benefits, the income received *shall* be used on behalf of the child to help pay for the cost of the foster care received.

Wash. Admin. Code § 388-70-069, *repealed by* Wash. St. Reg. 01-08-047 (Apr. 30, 2001).[7] "Income" expressly includes any

7. While this action was pending before the Washington Supreme Court (after oral argument, but before an opinion issued) DSHS replaced this regulation with Washington Administrative Code section 388-25-0210 which provides: "The department *must* use income not exempted to cover the child's cost of care. . . ." (emphasis added.)

SSI or Title II benefits the child receives. The regulation further compels any person or agency that receives Social Security benefits on behalf of a child in foster care to remit those funds to the office of support enforcement. *Id.*

Pursuant to this statute and regulation, DSHS deposits the Social Security benefits it receives on behalf of children in foster care into a single "Foster Care Trust Fund Account" at the Office of the State Treasurer. (Pet. App. 52 ¶ 17.) The Trust Fund Unit of DSHS establishes a paper "subsidiary account" for each child. (Pet. App. 54 ¶ 20.) The child's account is "credited" each month when SSI or SSA benefits are deposited into the pooled Trust Fund Unit account. The child's account is "debited" each month when payments are paid from the pooled account to Children's Division. (Pet. App. 56 ¶ 28.) To determine the amount to debit from a child's account, the Trust Fund Unit accesses Children's Division's computer-generated list of "reimbursable foster care expenses" and pays Children's Division up to the full amount of the benefit received in a given month. (Pet. App. 56 ¶29.)

Any remaining balances are carried over and are subject to intermittent account sweeps. (Pet. App. 63 ¶ 58.) Account sweeps, which can debit a single account of thousands of dollars in a given day, take all of the Social Security funds that have accumulated to that date and apply them to all of the State's accumulated reimbursable foster care expenses. (Pet. App. 63 ¶ 58; 69 ¶ 82.)

The monthly reimbursement stipend paid to foster care parents is only one of the charges that Children's Division charges to a child's trust fund account as a reimbursable foster care expense. As services are provided to a child, Children's Division enters codes on that child's account indicating how much the child should be charged for that service. The service codes that can be charged to the child's Social Security benefits

are identified on a "T-Payment Code List."[8] (J.A. 404-05 & Ex. A hereto.) Many of the codes include a wide variety of services. For example, Service Code #3210 includes charges for "basic rate for room, board, clothing, and personal incidentals," as well as programmatic expenses such as "placement and counseling," and "case management services." (J.A. 420.) Children's Division also requires reimbursement for transportation costs and associated expenses for family counseling (Code #3233); private agency foster care, including case management services (Code #3211); arranging for and making payment to a psychologist or other qualified person for an evaluation of a child, parent, or foster parent, including preparation of written reports and case consultation (Codes #3232 and #3235); and caseworker transportation costs (Codes #3233 and #3234).[9]

In reliance on this cost recovery program, DSHS's budget "includes as part of its revenue sources, SSA and SSI payments anticipated to be received by DSHS as representative payee." (Pet. App. 55 ¶ 22.) These anticipated revenues reduce the amount the state legislature is required to appropriate to DSHS. (Pet. App. 55 ¶ 23.) Because 100% of the benefits are allocated in advance of receipt for foster care reimbursement, social workers who would like to use a child's Social Security benefits

8. The DSHS Service Code Manual ("SSPS Manual") describes the services that may be charged under each code number. (J.A. 407, 471.) The Washington Supreme Court was able to determine which programmatic expenses were subject to payment from Social Security benefits by comparing the State T-list (J.A. 404-05), with the service code descriptions indicated in the SSPS Manual. (J.A. 407, 471.) The T-list in the Joint Appendix at 404-06 inadvertently omits some columns of identifying code numbers. An accurate copy of the T-list is attached as Exhibit A to this Brief.

9. The record does not reveal how DSHS determines how much a child's account should be assessed for services provided by DSHS's own staff, such as social worker visits, setting up counseling appointments, and preparing written reports.

to pay for items needed by the child must request and justify a "waiver of reimbursement" from the DSHS Trust Fund Unit. Waiver requests are granted in the discretion of the Trust Fund Unit. (Pet. App. 57 ¶¶ 30-33.) Only upon approval of a waiver can a child's benefit payments be used for any purpose other than cost recovery.

A ten-year review of a random sample of 48 accounts of children in foster care showed that waivers are seldom requested or authorized.[10] In the sampled accounts, only 3% of the Social Security benefits were used for any purpose other than cost recovery. (Pet. App. 60 ¶ 47.)

The State representative payee has no regular, systematic program to determine what "extra items" or "special needs" would directly benefit the children. (Pet. App. 59 ¶ 41.) The children and foster care providers are not told that the benefits are available. (Pet. App. 59 ¶ 40.) The Secretary of DSHS has not issued written instructions or guidelines to establish when and if special needs and extra items and savings should be requested or approved. (Pet. App. 58 ¶ 38.)

The trial court found that DSHS fails to account for parental support before it seeks reimbursement for services to a child. This failure allows DSHS to receive double repayment of the same expenses, recovering costs from both a support paying parent and again from the child's Social Security benefit. (Pet. App. 68 ¶ 77; 70 ¶ 84.) The State has been aware of this "double-dipping" at least since 1994 but has failed to implement any corrective measures. (Pet. App. 69 ¶ 81.) A similar failing

10. The review of the random samples was conducted by the parties as part of the discovery process initiated in response to the Washington Supreme Court's remand order. *See infra* p. 12; (Pet. App. 46-111.)

allows DSHS to obtain reimbursement for costs that were paid by the Federal government. (Pet. App. 70 ¶ 85; 70-71 ¶ 88.)[11]

C. ADMINISTRATIVE PROCEEDINGS

In July 1990, Danny Keffeler entered Washington's foster care system. Danny's mother died two months later, making him eligible for Title II (survivor) benefits. Danny's grandmother, Wanda Pierce, although unable to take custody of Danny, was appointed guardian of Danny's estate. She applied for Title II benefits for Danny and began receiving them as Danny's representative payee, pursuant to 42 U.S.C. § 405(j). Ms. Pierce administered the benefits through a state guardianship proceeding. She expended some funds to provide for current maintenance not provided by the foster care program and conserved the remainder to pay for college.

In April 1991, SSA notified Ms. Pierce that it was removing her as Danny's representative payee and naming instead the DSHS Trust Fund Unit. Ms. Pierce successfully appealed to the Social Security Office of Hearings and Appeals, which ordered that she be reinstated as Danny's representative payee in January 1993.[12]

In February 1994, DSHS launched a two-pronged attack on Ms. Pierce as Danny's representative payee. First, it filed a creditor's claim against the Guardianship Estate and filed a show cause order why the guardianship should not be required to assign the SSA checks to the DSHS Trust Fund, why Ms. Pierce should not be removed as guardian of the estate, and why Ms. Pierce should not be required to pay all previously received

11. The State argued that it passed this cost recovery back to the Federal government but provided no evidence of such repayment. (Pet. App. 70-71 ¶ 88.)

12. DSHS received approximately $5,000 of Danny's Social Security benefits while the appeal was pending.

and conserved Social Security funds to the Trust Fund. Contemporaneously, DSHS again applied to be Danny's representative payee and requested a rehearing of the Hearings and Appeals Decision by the Appeals Council. Danny's benefits were suspended while the matter was on appeal. DSHS dismissed its state court claim after Danny asserted that 42 U.S.C. § 407(a) barred the State's action, but pursued its administrative action.

The Appeals Council remanded the matter to a second Administrative Law Judge, who again determined that removal of Ms. Pierce was improper. Citing 20 C.F.R. § 404.2050, the ALJ held that although spending on the beneficiary's current maintenance was permissible under the guidelines, "so long as the current needs of the claimant are being met, the law does not require a spending upon support and maintenance." (J.A. 80-81.) Ms. Pierce's decision not to use Danny's benefits to "defer the cost of foster care" did not violate any of the representative payee guidelines. (*Id.* at 82.) Although DSHS filed an appeal, it abandoned the appeal once the present case was filed.

Ms. Pierce continued to serve as Danny's representative payee until his emancipation and conserved a portion of his benefits for his education. Danny Keffeler graduated from Central Washington University in June 2002.

D. PROCEDURAL HISTORY OF THIS ACTION

Danny Keffeler filed a class action complaint in the Superior Court of Okanogan County on April 18, 1995. In March 1997, the trial court certified a class consisting of:

> All foster children within the State of Washington, past, present, and future in foster care that receive [either SSA or SSI benefits] for whom the State of Washington acts or has sought to act as "representative payee."

Estate of Keffeler v. *Department of Social & Health Servs.*, 32 P.3d 267, 273 (Wash. 2001); (Pet. App. 15.)

In response to the parties' cross motions for summary judgment, the trial court ruled in favor of the class. The trial court held that DSHS's use of Social Security benefits to reimburse the cost of foster care violated 42 U.S.C. § 407(a) and that DSHS violated procedural due process guarantees by failing to provide notice that its sole purpose in applying to become representative payee was to secure the funds needed to reimburse the State for the cost of providing foster care. (Pet. App. 122.) The trial court enjoined DSHS from taking any action to remove a private representative payee and from using Social Security funds to reimburse costs of foster care.[13] The court also ordered DSHS to restore the Social Security benefits that had been used to reimburse foster care expenses and awarded attorney's fees. (Pet. App. 112.) The Department appealed; the Washington Court of Appeals immediately certified the case to the Washington Supreme Court.

After briefing and oral argument, the Washington Supreme Court remanded the matter to the trial court for specified findings of fact primarily relating to Washington's foster care program and DSHS's administration of the funds it receives as the representative payee of children in foster care. The trial court, after reviewing the affidavits, depositions, and stipulations submitted by the parties, entered 89 findings of fact. (Pet. App. 46 - 111.)

E. WASHINGTON SUPREME COURT'S RULING AFTER REMAND

Following two rounds of briefing and oral argument, the Washington Supreme Court held that the reimbursement practices of DSHS violated both the anti-alienation provisions

13. This provision of the injunction was not appealed.

of 42 U.S.C. § 407(a) and the requirement of 20 C.F.R. § 404.2035(a) that representative payees administer the benefits they receive in the best interest of the beneficiary. (Pet. App. 25, 28.) In holding that the State violated § 407(a), the court first reviewed the Washington statutes and regulations governing its cost recovery program and the procedures followed by the State in seeking appointment as the representative payee of children in foster care. The court found noteworthy the Department's admission that it "probably" would not seek to serve as a representative payee if it could not use the benefits to reimburse foster care costs and the trial court's finding that obtaining reimbursement was the "sole purpose" of the State's application to serve as representative payee. (Pet. App. 18-19.)

The court characterized the critical issue as whether "DSHS acts as a creditor when it reimburses itself for foster care costs out of the children's Social Security entitlements," in contrast to the State's contention that its actions were those of a representative payee properly using the benefits to pay for the child's current maintenance. (*Id.* at 19-20.)

The court concluded that Washington's statutes and regulations created a debtor-creditor relationship between the State and children in foster care.

> As DSHS presently conceptualizes the matter, RCW 74.13.060 (and its implementing regulation, former WAC 388-70-069) requires it to reimburse itself for the public assistance it has meted out to foster children from money, including SSA entitlements, that come into the children's possession. If the Legislature and DSHS did not hold the costs of foster care were somehow "owed" back to the taxpayers, it would not claim the right of DSHS to "reimburse" itself on the taxpayer's behalf.

(*Id.* at 27.)

The "facial logic" of the reimbursement scheme required by Washington law, the court held, demonstrated "a creditor relationship, a relationship involving creditor-type acts, vis-à-vis foster children and their SSA benefits." (Pet. App. 20.) The court rejected the State's argument that its conduct did not violate § 407(a)'s proscription against subjecting Social Security benefits to "execution, levy, attachment, garnishment or other legal process" because it was a representative payee.

> [I]t is not DSHS's procedure to apply to become the foster children's representative payee that is under attack; rather it is DSHS's practice of reimbursing itself from the foster children's SSA benefits once it *becomes* representative payee.
>
> The difference is subtle, but the distinction is crucial. There is nothing ipso facto wrong with DSHS applying to become the representative payee for certain foster children, as § 405(j) and the SSA's accompanying regulations explicitly contemplate. We may even agree the representative payee application is not "other legal process." But it is equally clear the reimbursement process is "other legal process". . . .

(*Id.* at 24-25.) Because DSHS's reimbursement process mandates that it take the Social Security benefits of children in foster care "to reimburse itself for moneys spent on the child," the majority opinion concluded that DSHS's controlling regulations and procedures violated § 407(a). (*Id.* at 25.)

The court also concluded that DSHS's mandatory reimbursement procedures violated 20 C.F.R. § 404.2035's requirement that representative payees use the benefits they receive "in the best interests of the beneficiary." The opinion

expressed doubt that use of Social Security benefits to reimburse public assistance "is in all cases, or even some, in the best interest of the beneficiary." (*Id.* at 28.)

The court distinguished a representative payee's permissible use of the funds to provide current maintenance from Washington's mandatory reimbursement regime.

> Using this money for the care and maintenance of the beneficiary, as required under 20 C.F.R. § 404.2035(a), would indeed be in the best interest of the beneficiary, *but that is significantly different* from using the money to reimburse the state for payments it made for the care and maintenance of the foster child — especially when that payment to the state cannot be legally compelled and, moreover, could be used or conserved for other special needs for the child.

(*Id.* at 28 (emphasis added).) DSHS's reimbursement procedures, the court concluded, created an irreconcilable conflict of interest with its quasi-fiduciary duty to use the Social Security benefits in the best interest of the children. The majority then affirmed the trial court's "results" and remanded the action to the trial court for further proceedings consistent with its opinion. (*Id.* at 31.)

Three justices concurred in part and dissented in part, agreeing with the majority that DSHS's cost recovery program violated § 407(a).

> DSHS receives the [Social Security benefits] not on its own behalf, but on behalf of the beneficiaries, and is not permitted to assign pending (i.e., future) payments to the reimbursement of its expenditures on behalf of the foster children. Where an agency

> puts reimbursement to itself ahead of the best interests of the child, ignoring the policy expressed in the federal regulations to prioritize the child's special needs, it effectively transfers the payments to its own use. This transfer from the state in its role as representative payee to the state in its role as guardian of the public purse is contrary to § 407(a). Where the agency pursues that policy to the extent of double reimbursement, the conflict of interest is egregious.

(*Id.* at 38.) The concurring justices also agreed that DSHS's policies and procedures made it a creditor and created a conflict of interest between it and the children to whom it owed a fiduciary duty: the "fact that DSHS . . . puts its need for reimbursement ahead of the needs of the foster children further demonstrates the fundamental conflict between its roles as representative payee and creditor." (*Id.* at 36.) The concurrence further agreed that DSHS's practices violated federal law because of the direct conflict between the "federal mandate to give priority to the special needs of the beneficiary" and the "express policy of DSHS to conserve the expenditure of public assistance funds on foster care and thereby lighten the burden on the taxpayer." (*Id.*) The concurrence also joined the majority in condemning the State's practices of reimbursing itself for past due foster care costs (*id.*), reimbursing itself without taking into account the special needs of the beneficiary (*id.*), account sweeping (*id.* at 33), and reimbursing itself for foster care expenses already paid from parental child support and federal programs. (*Id.* at 38.)

The concurring and dissenting justices, however, characterized the majority as having held that *any* use of the Social Security benefits by DSHS, even use for current maintenance, would violate § 407(a). (*Id.* at 35.) This mistaken characterization of the majority's holding appears to have reflected an effort to define a disagreement with the majority as

to whether DSHS's reimbursement of its expenditures on items that qualified as current maintenance violated § 407(a).[14] The concurring and dissenting justices found that even though DSHS acted as a creditor when it reimbursed itself for foster care expenditures, because DSHS was a representative payee, such reimbursement was not constrained by § 407(a) so long as the expenses had been incurred for current maintenance and any special needs of the beneficiaries were satisfied first. (*Id.* at 33-34.)

While the majority had simply remanded the action to the trial court for further proceedings based on its opinion, the concurring and dissenting justices would have directed the trial court to modify the injunction to prevent "DSHS from using Social Security payments to reimburse the costs of past due foster care or other expenses not directly related to current maintenance, and to require DSHS give special needs a higher priority than current maintenance." (*Id.* at 39.)

F. PROCEEDINGS IN THIS COURT

DSHS applied for a stay of the Washington Supreme Court's mandate. After calling for and receiving the views of the Solicitor

14. To be sure, the Washington Supreme Court opened the door to the concurring and dissenting justices' mischaracterization by stating at the opening of its opinion: "We hold DSHS as representative payee violates § 407(a) when it applies Social Security benefits to the current maintenance needs of foster children. . . ." (Pet. App. 2.) The court used this same formulation in describing the issue for decision a few lines later. The court, however, never again repeats this formulation in the 36 remaining pages of its opinion, and it is clear from the entirety of the opinion that the court was focused on DSHS's reimbursement practices, not on any direct use of the actual Social Security benefits for current maintenance. The court's early formulation of the issue appears to have been in deference to the State's characterization of its reimbursement practices as being a use of the funds for current maintenance.

General, this Court granted a stay pending action on DSHS's petition for certiorari.

On March 14, 2002, DSHS filed its Petition for Writ of Certiorari asserting the question presented to be simply whether a representative payee could use Social Security payments for the "current maintenance" of the beneficiary. The Estate of Keffeler filed its opposition to the petition on April 25, 2002, asserting, *inter alia*, that there was no disagreement between the parties on the question presented as asserted in the Petition. On May 28, 2002, the Court issued an order granting the Petition for Writ of Certiorari.

SUMMARY OF THE ARGUMENT

DSHS comes before the Court wearing two hats. In one capacity, it serves as the administrator of Washington's foster care program. In its role as the state agency responsible for this program, DSHS administers a program that is funded by a combination of state (71%) and federal (29%) dollars to care for children who cannot safely be cared for by their parents or other relatives.

In a separate capacity, DSHS has elected to serve as the representative payee for children in foster care who receive Social Security benefits. No state or federal law compels it to do so, and the State does not become entitled to any increase in federal funding because of its election to serve.

In its capacity as a representative payee, DSHS is obligated to administer the funds it receives for the exclusive "use and benefit" of the child beneficiary and in the "best interest" of that beneficiary. It is a "trustee" with a fiduciary obligation to insure the appropriate use of the funds to serve the needs of the intended beneficiary.

Rather than administer the funds in the best interest of the beneficiaries, however, Washington has implemented a "cost recovery program" that uses the Social Security benefits to reimburse the State for costs incurred in the foster care program. The State candidly admits that cost recovery is the sole purpose of its application to serve as representative payee. This use of the funds violates § 405(j) because it is not in the best interest of the child to use the benefit to reimburse public assistance rather than to pay for current and future needs of the child. The State's program also violates section § 407(a) because it subjects the benefits to a legal process that requires, in the same manner that an assignment, lien, or garnishment would, that the benefits be used to reimburse a debt to the State.

Prior to adopting its litigation position in this case, SSA consistently required that representative payees comply with § 407(a) and act in the best interest of the beneficiary. It did not authorize use of Social Security benefits to repay public assistance unless the best interest of the beneficiary required the repayment and other current and forseeable needs of the beneficiary had been met. Although SSA contends Washington's representative payee program is compliant with §§ 407(a) and 405(j), this position cannot be squared with the plain language of these statutes or SSA's implementing regulations.

Indeed, it appears that SSA has chosen simply to ignore the deficiencies in DSHS's conduct as a representative payee. Notwithstanding even the double-dipping, reimbursement of administrative expenses, account sweeping, and reimbursement of past-due costs condemned by all of the justices of the Washington Supreme Court, SSA holds to its position that DSHS is a model representative payee. Whether SSA's refusal to confront the problems in DSHS's administration springs from a belief that, in prudence, states should be exempt from compliance or from a desire to increase federal funding of foster care, SSA should ask Congress, and not this Court, to change the law. The Washington Supreme Court's decision should be affirmed by this Court.

ARGUMENT

A. SECTION 405(j) REQUIRES DSHS TO ACT IN THE BENEFICIARIES' BEST INTEREST AND PROHIBITS SELF DEALING.

Almost from its inception, the Social Security Act has provided for a system of representative payment for Title II or SSI beneficiaries who need assistance in managing their benefits. 42 U.S.C. § 405(j); 42 U.S.C. § 1383(a)(2)(A)(ii).[15] *See* Social Security Amendments of 1939, ch. 666, § 205(j), Pub. L. No. 76-379, 53 Stat. 1360, 1371. The representative payee program is intended to "strengthen and extend the principles and objectives of the Social Security Act" and to "widen the scope and to improve the adequacy and the administration of [Social Security] programs without altering their essential features." H.R. Rep. No. 76-728, at 5 (1939).

To ensure that implementation of the payee program furthers the purposes of the Social Security Act, § 405(j) has always required that benefits paid to someone other than the beneficiary are to be used solely for the beneficiary's exclusive "*use and benefit*." Social Security Amendments of 1939, 53 Stat. at 1371 (emphasis added).[16] SSA regulations further define "use and

15. Section 405(j) authorizes the appointment of a representative payee under Title II of the Social Security Act. Appointment of a representative payee for SSI recipients is authorized under 42 U.S.C. § 1383(a)(2)(A)(ii), which mirrors § 405(j).

16. The current version of § 405(j) provides:

> If the Commissioner of Social Security determines that the interest of any individual under this subchapter, would be served thereby, certification of payment of such individual's benefit under this subchapter may be made, regardless of the legal competency or incompetency of the individual, either for direct payment to the individual, or for his or her *use and benefit*, to another individual or organization. . . .

(Cont'd)

benefit" to mandate that a representative payee has a responsibility to "[u]se the payments he or she receives only for the use and benefit of the beneficiary in a manner *and for the purposes he or she determines, under the guidelines in this subpart, to be in the best interests of the beneficiary. . . .*" 20 C.F.R. § 404.2035; § 416.635 (emphasis added).[17]

The regulations provide that "payments . . . have been used for the use and benefit of the beneficiary if they are used for the beneficiary's current maintenance. Current maintenance includes costs incurred in obtaining food, shelter, clothing, medical care, and personal comfort items." 20 C.F.R. §§ 404.2040(a), 416.640(a). Although DSHS argues that payment of any expenses falling within the scope of current maintenance would always be appropriate, that is not so; under §§ 404.2035 and 416.635 a representative payee must also determine whether such payments would be in a child's best interest. Accordingly, § 405(j) requires the representative payee first to determine whether a benefit use is for the recipient's exclusive use and benefit, and second, to exercise discretion to use benefits in the recipient's best interest.

This analysis reveals several serious flaws in DSHS's argument that it expends the children's benefits solely on "current maintenance" and that its use of the funds is therefore permitted under § 405(j)(1)(A). First, DSHS does not use the children's benefits to provide current maintenance, but rather

(Cont'd)
42 U.S.C. § 405(j)(1)(A) (emphasis added). The applicable regulations further clarify the role of the representative payee: "to receive benefits on behalf of a beneficiary [when the SSA] believe[s] that the interest of a beneficiary will be served by representative payment rather than direct payment of benefits." 20 C.F.R. § 404.2001(a).

17. To this end, Congress has prohibited those most likely to have a conflict of interest with the beneficiary, such as creditors, from serving as representative payee. *See* 42 U.S.C. § 405(j)(2)(C)(i).

uses them to reimburse itself for its costs of foster care. Not only is this problematic because of the nature of reimbursement, but also because many of the expenses reimbursed fall far beyond the bounds of "current maintenance." Second, the regulations require a representative payee to exercise discretion in expending benefits. Washington's cost-recovery policy, however, as reflected in its statutes, regulations, and budgeting procedures, remove any such discretion from the hands of DSHS. Lastly, even if DSHS were able to exercise discretion, the repayment of public assistance, whether as a debt or a voluntary payment of a non-debt, cannot be in a child's best interest when the child has other unmet current and future needs and will continue to be eligible for public assistance regardless of reimbursement.

1. DSHS's Cost Recovery Program Cannot Be Justified as a Use of the Benefit by a Representative Payee for "Current Maintenance."

Notwithstanding its admission that, as required by state law, it applies the Social Security benefits it receives "as reimbursement" to its foster care expenditures, DSHS defends its program as a permissible use of the benefits by a representative payee to pay current maintenance. Wash. Rev. Code § 74.13.060; (Pet. Br. 32.). To this end, DSHS argued in the Washington Supreme Court that it merely passed through the benefit to the foster family to pay for current maintenance. This argument prompted the Washington Supreme Court to remand the case to the trial court to make further findings, including whether and how the benefit is "passed through" to the foster family. (Pet. App. 43 ¶ 2(d)(iii).) DSHS ultimately had to admit that its procedures could not be characterized as a "pass through." (Pet. App. 55 ¶ 24.) Not only does DSHS's program fall short of passing through the benefits to the foster family for use to pay current maintenance, its specific features make clear that the benefits are being used to reimburse state public assistance costs and not for current maintenance of the beneficiary.

a. DSHS uses the benefits to reimburse for past care and services and to repay programmatic expenses.

DSHS's internal process of reimbursement belies its contention that the children's benefits are simply passed through to provide "current maintenance." Under DSHS's system, SSI and Title II benefits payable to the Secretary of DSHS as representative payee are deposited in the Foster Care Trust Fund Account at the State Treasurer's office. (Pet. App. 52 ¶ 17.) This account is debited two to three months later for care and services rendered in prior months by the Children's Administration. The process is one of reimbursement, not use for current maintenance.

Moreover, DSHS's definition of "reimbursable foster care expenses" indicates that many of the service codes under which DSHS claims reimbursement include a wide gamut of programmatic expenses. *See supra* pp. 7-8. DSHS incredibly asserts that no benefits are used for administrative expenses. Regardless of the label given the above expenses, it is clear that these items are not "current maintenance."[18]

---

18. In its Application for a Stay, DSHS argued that it could not continue to serve as the representative payee for disabled children in foster care and perform the work needed to apply for and maintain their eligibility for SSI benefits, unless it was allowed to recoup some of its costs. DSHS argued that it expends $1.9 million dollars a year and employs 27 staff members solely for this purpose.

Congress anticipated that representative payees would incur administrative expenses and allows payees such as state or local government agencies to charge beneficiaries $25 per month or 10% of the benefit, whichever is less, as compensation for their services. 42 U.S.C. § 405(j)(4)(A)(i). If Washington and other states find the amount provided for in § 405(j)(4)(A)(i) insufficient, the solution is a legislative, not a judicial, one.

b. *At intermittent intervals, DSHS sweeps the children's accounts of accumulated benefits.*

The court found that DSHS engaged in "account sweeping," a practice that sometimes results in taking all of the Social Security funds that have accumulated to that date and applying them to all of the Department's accumulated reimbursable foster care expenses, sometimes incurred years earlier. (Pet. App. 63 ¶ 58.) The Narrative Summary of 48 Random Cases provides several specific examples of account sweeping. Nacole Blimka's account was swept twice, once on August 5, 1997 for $1,966 and again on October 15, 1997 for $983. (Pet. App. 100.) Clark Casey's account was swept on a single day in 1995 to repay $2,233 for foster care provided during the months of May, June, July, August, September, and October of 1994. (*Id.* at 101.) Jasmine Cotton's account was swept on May 8, 1996, when the State reimbursed itself $11,676 for foster care expenses dating back to April 1994. (*Id.*)[19]

The children have brought this issue to light at each stage of their briefing, and DSHS has remained silent, continuing to assert that all funds are used to pay current maintenance and that repayment is simply delayed a month due to bookkeeping. The examples cited above, however, belie this assertion and illustrate that DSHS acts as a creditor and attaches the children's benefits to repay their "debts."

c. *Double dipping – DSHS "reimburses" itself for costs paid from federal funds or already reimbursed by the child's parent.*

Further evidence that DSHS is not using the children's funds to provide current maintenance is the fact that, for many children, these very same expenses have already been paid for by federal funds or parental support.

19. The record contains numerous other examples. (*See, e.g.*, Pet. App. 63 ¶ 58.)

> Federal funds are used to pay for a portion of foster care payments to licensed foster homes and licensed group homes. During [the] 1995-1997 biennium approximately $137.8 million was spent on payments to licensed foster care homes and group homes. Approximately $34.4 million of this total budget, or about 25%, is from federal sources. . . . Of these federal monies, $13.4 million of the federal funds is from the Title IV-E program.

(J.A. 103, Affidavit of Richard Anderson, Office Chief for the Office of Federal Funding in the Division of Program and Policy for Children's Administration.) Despite receiving federal funds for at least a portion of the foster care stipend payment and other foster care costs, DSHS requires the children to repay the State for 100% of these costs. (Pet. App. 70 ¶ 88.)

Moreover, some of the children have parents who are required to pay child support to DSHS's Children's Services to cover its "reimbursable foster care expenses." (*Id.* at 68-69 ¶¶ 77-78.) DSHS receives approximately $3.25 million in child support payments each year. (*Id.* at 70 ¶ 84.) The trial court found, however, that no entry is made upon a child's DSHS Trust Fund Subsidiary Account to show any amounts received from parental support. (*Id.* at 69 ¶ 79.) The trial court further found that the head of the Trust Fund Unit has known since at least 1994 that it was failing to account for child support payments for children receiving SSI and Title II. (*Id.* at 69 ¶ 81.) Accordingly, the State likely recovers its costs twice when it uses Social Security benefits to repay foster care expenditures already paid from parental support. (*Id.* at 68-69 ¶¶ 77-80.)

DSHS offers no response to these trial court findings, all of which refute DSHS's contention that it merely uses the funds to pay "current maintenance." The use of the children's Social Security benefits to pay for programmatic costs, for past due

expenses, and for costs and services paid for by federal funds or child support payments violates § 405(j)'s "use and benefit" requirement and serves no interest, much less the best interest, of the child.

2. DSHS Is Barred by State Law from Using the Discretion Required of a Representative Payee.

Social Security regulations mandate that a representative payee exercise discretion in determining, under the guidance of the regulations, whether a payment is in the best interest of the beneficiary. 20 C.F.R. §§ 404.2035, 416.635. By contrast, Washington Administrative Code § 388-25-0210, as well as the State's budgetary practice, *require* DSHS to use the children's Social Security funds to offset the costs of foster care without regard to, or consideration of, the individual child's needs or best interest.[20] *Id.* ("The department *must* use income not exempted to cover the child's cost of care. . . .") (emphasis added). Further, although DSHS contends that there is a possibility that benefits could be used for purposes other than reimbursement, the trial court found that the Department failed to present any evidence that it "makes any regular, systematic or uniform attempt, on a monthly basis or otherwise, to determine what 'extra items' and/or 'special needs' would directly benefit the children in State foster care before applying the SSA and SSI funds, in [its] control, to reimburse" general foster care costs. (Pet. App. 59 ¶ 41.)

3. A Proper Administration of Benefits Would Require DSHS to Consider the Child's Current and Future Needs Before Contemplating Reimbursement.

In stark contrast to DSHS's practice of allocating all of a child's benefits to its own use, the examples accompanying

20. Underlying DSHS's actions is the Washington's cost recovery policy requiring the Department to conserve the expenditure of public funds and thus lighten the burden on Washington taxpayers. *See* Wash. Rev. Code § 74.20.010.

§ 404.2040 illustrate how a representative payee must exercise discretion in expending a beneficiary's funds.

One example illustrates a proper allocation of benefits for an institutionalized beneficiary. The beneficiary's brother, in his discretion as representative payee, uses Social Security benefits to purchase his brother a pair of shoes, buy him a movie ticket, and provide him with cash for the canteen, even though these expenditures reduced the amount the representative payee usually paid the institution for his brother's care. The Commissioner instructs that this is a proper expenditure for current maintenance. § 404.2040(b).[21]

This example highlights the effect a representative payee's obligation to use discretion in determining the best interest of the beneficiary has on the payment of even routine current maintenance costs. In considering his brother's personal needs before determining whether it would be appropriate to apply the monthly benefits to his brother's cost of institutional care, the representative payee complied with longstanding Social Security Rulings regarding the "best interest" obligation.

In drafting the current final rules regarding the representative payee's obligation to expend funds in accordance with the best interest of the beneficiary, SSA confirmed that § 405(j) requires that a representative payee exercise discretion in determining whether benefits should be used to pay current maintenance. The SSA explicitly rejected the suggestion that a representative payee should be required to pay for current maintenance before using benefits to fund special needs.

> We received several comments that §§ 404.2040(b) and 416.640(b) of the proposed regulations should be changed to reflect that a

21. Although this example applies to institutional care only, which does not encompass residential foster care, it is illustrative because both situations involve the provision of care by a third party.

> beneficiary's personal needs over and above the expenses incurred for his or her basic needs (room, board, and nursing care) may be paid from the beneficiary's funds only after the beneficiary's obligations to pay for his or her basic needs have been met. . . . Although we provide guidelines as to what is in the beneficiary's best interests, there is a considerable amount of discretion provided the payee. If satisfying the beneficiary's significant personal needs before paying his or her institutional charges is in the beneficiary's best interests, then the payee is performing appropriately.

47 Fed. Reg. 30468 at 30470 (1982).

As this explanation confirms, only after all of a beneficiary child's needs for current maintenance beyond that provided by foster care and other special needs have been met, would it be permissible for DSHS to consider whether repayment of foster care expenses to the State would be appropriate.[22]

22. As more than two-thirds of the members of the class suffer from a total disability and receive as a stipend from the State less than 70% of the amount the federal government has determined to be necessary for basic subsistence, it is difficult to imagine that appropriate expenditures will be hard to identify. For children receiving SSI benefits, funding the cost of tutoring; medical care in the form of prostheses, braces, wheelchairs or guide dogs; speech and language development training; summer camp with others having the same disability; mobility enhancements; and aides, for example, could bring life-long benefits. Children in foster care receiving SSA benefits also need better care, in the form of educational support, adequate clothing, more nutritious food, and better housing. Both classes of children require savings to help meet the costs they will incur when they are unceremoniously expelled from foster care on their 18th birthdays. In fact, SSA regulations provide illustrations showing that a prudent administration of benefits requires at least modest savings. *See* 20 C.F.R. §§ 404.2045; 416.635; 404.2040(a) (saving of 7% of benefit lauded even though savings reduced the amount

(Cont'd)

Moreover, SSA guidelines make clear that a representative payee may not engage in self-dealing. According to the SSA's Guidelines for Organizational Representative Payees, an organization that serves as representative payee (defined as including "social service agencies, institutions, [or] an official of a state or local government agency") cannot reimburse itself for services that it provides to a beneficiary, even when paying for the service would otherwise be in the beneficiary's interest and even though the organization could pay someone else to provide the service. Thus, the guidelines would permit a representative payee to pay for the cost of providing a personal assistant to aid a beneficiary on a trip so long as the assistant "is not receiving any other source of remuneration from the representative payee's organization. However, if the personal assistant is an employee of the agency and on duty, the expenses should be paid by the agency." (*Social Security Representative Payment Program, Guide for Organizational Representative Payees* at E 24-25, attached hereto as Exhibit C, *available at* http://www.ssa.gov/payee/Guide/orgfaq.htm.) This example demonstrates the prohibition on self-dealing created by section 405(j), even where the payment of an expense would otherwise be allowed.

DSHS's use of the Social Security benefits it receives, first to reimburse itself for the cost of foster care services, and only secondarily to provide for other needs of the child, stands in stark contrast to the requirement that it act in the best interest of the child, eschew self-dealing and conflicts of interest, and provide, to the extent the funds permit, for the current and future well being of the beneficiary. The preferential repayment to itself of a public assistance benefit, particularly one funded

(Cont'd)
available for current maintenance). SSA's regulations simply do not provide or suggest that a representative payee should preferentially repay itself before critically appraising the present and future needs of the child and deciding that the reimbursement payment would be in the child's best interest.

substantially by federal dollars, directly violates the State's obligations as a representative payee.

4. The Washington Supreme Court Properly Questioned Whether Repayment of Public Assistance Could Ever Be in a Child's Best Interest

While stopping short of holding that it would never be the case, the Washington Supreme Court expressed doubt about whether a representative payee should ever reimburse public assistance.[23] (Pet. App. 28.) Although DSHS has put forth conflicting propositions as to whether the children actually owe the State for the costs of their foster care, it is undisputed that the children will receive foster care regardless of their ability to repay the State. Moreover, that the children are in foster care is for the most part unrelated to their receipt of SSI or SSA benefits. Accordingly, if funds are available to reimburse debt or to pay for care provided by other sources, nothing authorizes the State to prefer itself to the many other individuals and agencies that also provide current maintenance to the child. The foster parents, for example, are obligated to provide food, clothing, shelter, and medical care to the child in the first instance, but Washington makes no effort to reimburse them for expenses they may incur in excess of the stipend. Likewise, children in foster care are likely to be the recipients of many other forms of public and charitable assistance such as free-or-subsidized breakfast and lunch, Medicaid, IDEA plans, free dental and vision care, free health department immunizations and screenings, *et cetera*. DSHS cannot, consistent with its obligations as a representative payee, always and automatically reimburse itself in preference to others who provide current maintenance to the child.

23. The Solicitor General of the United States also has previously expressed the view that as a matter of public policy there was no reason to permit a state to use Social Security benefits to reimburse public assistance. *See infra* p. 41 (quoting Brief for the United States as *Amicus Curiae* in *Philpott* v. *Essex County Welfare Bd.*, 409 U.S. 413 (1973), attached hereto as Exhibit B).

That, however, is not the intent of these funds. Unlike Title IV-B and Title IV-E funds, SSI and Title II benefits were never intended to serve as general federal funding for foster care. While DSHS and *amici* argue that a system under which some children receive greater funding than others would create inequalities in the system, Congress has already made the social policy decisions about which children will get these benefits and which ones will not. DSHS and its *amici* simply wish to substitute their policy judgments for Congress's judgments. Congress has decided to provide these benefits to *individual* children on the basis of their disability or their parent's payment into an insurance program and not to use them to subsidize a state welfare program.

B. WASHINGTON'S COST RECOVERY PROGRAM VIOLATES § 407(a).

Section 207(a) of the Social Security Act, 42 U.S.C. § 407(a), known as the "anti-alienation provision," provides that the right to receive Social Security benefits "shall not be transferable or assignable, at law or in equity," and prohibits a beneficiary's creditors from reaching benefits "paid or payable" through "execution, levy, attachment, garnishment, or other legal process . . . ." *Id.* Congress included § 407(a) in the original Social Security Act of 1935,[24] and strengthened its force in 1983 when it added § 407(b), providing that no other provision of law passed "before, on, or after" the date of the enactment of § 407(b) "may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section." *Id.*; *see* Pub. L. No. 98-21, § 335(a), 97 Stat. 65 (1983).[25]

24. Congress extended the protection of § 407 to SSI benefits when it created the SSI program in 1972. See Pub. L. No. 603, 92nd Cong., 2nd Sess. (1972), 86 Stat. 1329, § 1631(d)(1), codified at 42 U.S.C. § 1383(d)(1).

25. Section 407(b) was a response to certain bankruptcy court decisions that had held that the Bankruptcy Reform Act of 1978, (Cont'd)

The text of the Social Security Act thus forbids the diversion of benefits through the mechanism that the Department has employed in this case. By its terms, § 407 prohibits the Department from employing a "legal process" to transfer benefits in satisfaction of a debt to the Department. As all of the justices of the Washington Supreme Court recognized, Washington law makes children who receive Social Security benefits responsible for repaying the State for the cost of foster care. To obtain payment of this statutorily created debt, Washington's statutes and regulations make the Department custodian of the children's Social Security benefits and require the Department to use those funds for reimbursement, regardless of whether that reimbursement is in the best interest of the child. The Washington statutes and regulations that create this reimbursement scheme constitute a forbidden "legal process" under § 407(a). Contrary to the Department's claims, its appointment as representative payee does not exempt Washington's statutes and regulations from the strictures of § 407(a) because § 407(b) makes clear that § 405(j) does not limit the scope of § 407(a).[26]

(Cont'd)
11 U.S.C. §§ 101-1330, repealed by implication § 407(a)'s bar on the assignment of benefits. *See United States* v. *Devall*, 704 F.2d 1513 (CA11 1983) (Social Security benefits can be assigned as part of a voluntary bankruptcy proceeding.); *In re Buren*, 6 B.R. 744 (M.D. Tenn. 1980). After Congress enacted § 407(b), the Sixth Circuit reversed *In re Buren*, stating that "the legislative history [of § 407(b)] indicates without question that Congress intended to reverse decisions like those on appeal here." *In re Buren*, 725 F.2d 1080, 1087 (CA6 1984). Congress passed § 407(b) to reconfirm that Social Security benefits remain beyond the grasp of creditors, even when a beneficiary may have consented to a prohibited use. *See In re Barron*, 85 B.R. 603, 606 n.8 (Bankr. N.D. Ala. 1988).

26. The concurring and dissenting justices of the Washington Supreme Court did not consider the effect of § 407(b) when they determined that § 407(a) did not apply to representative payees to the extent the debt sought to be repaid was for current maintenance. (Pet. App. 32-37.)

The Department's practice violates § 407(a) for two additional reasons. First, § 407(a) encompasses any attempt by a creditor to compel repayment of a debt, even if repayment is accomplished by seeking appointment as a representative payee. Second, the Department violates § 407(a) by assigning all of Respondents' benefits to the State in advance of their receipt as part of its budgetary process.

1. Section 407(a) Applies with Equal Force to Representative Payees.

The Department asks this Court to rewrite, or "harmonize," § 407(a) to create an exception for itself. Specifically, the Department suggests that because a representative payee is subject to the supervision of the SSA, there is no need for courts to apply the anti-alienation provision to representative payees. (Pet. Br. at 26-27.) The Department even goes so far as to suggest that applying § 407(a) to representative payees would be "redundant" as creditors (with limited exception) cannot be appointed as representative payees under the Social Security regulations.

The text of § 407(a) contains no such limitation on its scope. It applies broadly to anyone who would seek to employ legal process to secure the payment of a debt. There is no inherent tension between this broad bar against alienation and the provisions of the statute that authorize the SSA to supervise representative payees. There is nothing redundant about a congressional decision to grant the SSA a general role of supervising representative payees within prescribed parameters while making clear that specific conduct is categorically forbidden, *i.e.*, is outside those parameters. Moreover, there is nothing like the extreme redundancy that the Court requires as a predicate for the textual reconstruction the Department urges. *See Connecticut Nat'l Bank* v. *Germain*, 503 U.S. 249, 253 (1992). Thus, the structure of the Social Security Act does not

evince an exception to the plain textual bar on the Department's practice.

Indeed, the text and structure of § 407 itself foreclose the Department's argument. Contrary to the Department's argument that § 407(a) must be "read with" and "harmonized with" § 405(j), the language and history of § 407(b) demonstrate that the anti-alienation provision applies, regardless of any other law, unless that law explicitly mentions § 407.

Section 407(b) provides: "No other provision of law, enacted before, on, or after April 20, 1983, may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section." Section 405(j) does not remotely refer to § 407. Following the text, then, there is no exception for representative payees.

Confirmation that § 407(b) means what it says can be found in the legislative history. The record of enactment unequivocally indicates that courts are not to construe other provisions of the law as creating exceptions to § 407(a). *See* H.R. Conf. Rep. No. 47, 98th Cong., 1st Sess. 115, 153 (1983), *reprinted in* 1983 U.S.C.C.A.N. 404, 443 (Section 407(b) "[s]pecifically provides that social security benefits may not be assigned notwithstanding *any other provision of law.*") (emphasis added); H.R. Rep. No. 25(i), 98th Cong., 1st Sess. 1, 83 (1983), *reprinted in* 1983 U.S.C.C.A.N. 219, 301 ("Your Committee's bill specifically provides that Social Security and SSI benefits *may not be assigned notwithstanding any other provision of the law. . . .*" (emphasis added)).

Beyond § 407, the structure of other Social Security laws rejects the Department's suggested exception to § 407(a). Where Congress has intended to lift § 407(a)'s protections, it has complied with § 407(b) by referring explicitly to § 407 when

limiting the application of the anti-alienation provision. *See, e.g.*, 26 U.S.C. § 6334(c) (providing that Social Security benefits are not exempt from levy for the payment of federal taxes); 31 U.S.C. § 3716(c)(3)(A)(i) (allowing administrative offset of Social Security benefits to collect on a claim by the United States); 18 U.S.C. § 3613(a) (allowing the United States to enforce a judgment imposing a fine against a person's Social Security benefits); 26 U.S.C. § 86(a)(1) (for tax purposes, gross income includes Social Security benefits); 26 U.S.C. § 871(a)(3)(A) (85% of Social Security benefits of nonresident aliens are subject to taxation as income). Accordingly, a representative payee, even if duly appointed, is still subject to the provisions of § 407(a) and can neither voluntarily assign a beneficiary's right to future benefits nor subject them to legal process. *See Ellender* v. *Schweiker*, 575 F. Supp. 590, 599 (S.D.N.Y. 1983) ("Congress' clear and stringent interpretation of the prohibition on transfer or assignment of benefits in section 207(b) further compels us to strictly interpret [407(a) to prohibit even voluntary assignments.]"). Far from harmonizing the law of Social Security, the Department's suggested exception would needlessly introduce dissonance.

2. Washington's Statutes and Regulations, Which Compel Use of Respondents' Social Security Benefits to Reimburse Foster Care Costs, Constitute "Legal Process" Forbidden by § 407(a).

This Court has repeatedly held that § 407(a) means what it says. There is no persuasive ground on which to distinguish these precedents. Again, § 407(a) prohibits Social Security benefits from being subject to "execution, levy, attachment, garnishment, or other legal process." This Court has declared that this language "imposes a broad bar against the use of any legal process to reach all Social Security benefits." *Philpott* v. *Essex County Welfare Bd.*, 409 U.S. 413, 417 (1973). In *Philpott*, the Welfare Board of Essex County, New Jersey, sued to enforce an agreement under which a Social Security beneficiary had

agreed to reimburse the state for the financial assistance received by the beneficiary. *Id.* at 415. The Court concluded that § 407(a) rendered the agreement to repay Social Security benefits unenforceable. *Id.* at 417. The Court refused to find an "implied exemption" to § 407(a) that would allow a state to recover the cost of state services from federal Social Security benefits. *Id.* at 416-17.

The Court reached the same conclusion in *Bennett* v. *Arkansas*, 485 U.S. 395 (1988), where Arkansas sued the estate of a prisoner to recover the cost of providing that prisoner care and maintenance while incarcerated. Arkansas acted pursuant to a state law that made the prisoner's estate, defined to include his social security benefits, responsible for that reimbursement. *Id.* at 396. The Court concluded that the statute conflicted with § 407(a) even though the state was reimbursing itself for the cost of providing "care and maintenance" to the prisoners. *Id.* at 397-98.

Here, the statutes and regulations which appoint the Department custodian over Respondents' Social Security benefits and which require the Department to use those benefits to repay state provided public assistance have the same purpose and effect as the practices disapproved by the Court in *Philpott* and *Bennett*. They are therefore "legal process" forbidden by § 407(a). Furthermore, because the State seeks appointment as representative payee for the sole purpose of accomplishing its reimbursement scheme, its appointment is also a violation of § 407(a).

a. The "Legal Process" at issue is the State's reimbursement scheme.

The Department argues that *Bennett* and *Philpott* do not apply because, rather than suing to gain access to Social Security benefits, here the Department voluntarily reimburses itself after being appointed representative payee, an act which relieves the

Department from having to sue to gain access to Respondents' benefits. The Department argues that its actions do not constitute "legal process" under § 407(a).

The Department points to two courts of appeals cases, *Mason* v. *Sybinski*, 280 F.3d 788 (CA7 2002),[27] and *King* v. *Schafer*, 940 F.2d 1182 (CA8 1991), and two state court cases, *C.G.A.* v. *Alaska*, 824 P.2d 1364 (Alaska 1992), and *Ecolono* v. *Division of Reimbursements of the Department of Health & Mental Hygiene*, 769 A.2d 296 (Md. App. 2001), for the proposition that "legal process" does not include the appointment of a representative payee. (Pet. Br. at 25.) The Department's argument misses the point. The legal process at issue in this case is the reimbursement scheme, created by Washington regulations and law, pursuant to which the Department is required to seek appointment as representative payee in order to reimburse the State from Respondent's Social Security benefits.[28] Although the mere act of being appointed

27. As discussed above, the Department's reliance on *Mason* is undercut by the fact that the representative payee in *Mason* was a care facility licensed under state law. Such facilities are expressly allowed to apply Social Security benefits to the costs of institutional care. 42 U.S.C. § 405(j)(2)(C)(iii)(III). Furthermore, the Seventh Circuit's opinion in *Mason* makes clear that the state hospital in *Mason* provided each beneficiary with money to pay for personal necessities before reimbursing itself. 280 F.3d at 791. The situation in Washington is completely reversed: reimbursement, rather than providing for the children's individual needs, is the Department's primary goal.

28. In their briefs, the *amici* States as well as the *amici* California counties claim that the affirmation of the Washington Supreme Court's opinion will call into question the actions of all 50 states as representative payees. As the brief of the California counties demonstrates, however, not every state uses Social Security benefits to reimburse itself for the cost of providing foster care. According to the *amici* California counties, California does not use the benefits for reimbursement. California does, however, reduce the amount of state benefits by the amount of Social Security benefits a child receives. (Brief of *Amici Curiae*, Counties of (Cont'd)

representative payee may not be "legal process" under § 407(a), the creation by state law and regulation of a mechanism by which the State is required to attach Social Security benefits for its own reimbursement is legal process.

b. Section 407(a) prohibits more than "judicial process."

The text of § 407(a) applies the anti-alienation principle to any "legal process" used to divert Social Security benefits for the payment of a debt. The United States as *amicus* seeks to evade this straightforward reading of § 407's text. Contrary to the statute's plain meaning, *amicus* argues that "other legal process" means "other judicial process" and that § 407(a) bars only court orders requiring a beneficiary to pay social security benefits to a creditor. But, "judicial" is not what the statute says and there is no reason to suppose that Congress would have said "legal" when it meant "judicial." *See Connecticut Nat'l Bank*, 503 U.S. at 253-54 ("We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last. . . ."); *United States* v. *Ron Pair Enters.*, 489 U.S. 235, 241 (1989) ("where, as here, the statute's language is plain, 'the sole function of the courts is to enforce it according to its terms'") (quoting *Caminetti v. United States*, 242 U.S. 470, 485 (1917)).

(Cont'd)
the State of California at 15.) The reduction of state benefits based on the receipt of federal benefits is far different from a reimbursement scheme and is not before the Court in this case. That such a program may be consistent with § 407(a) would not justify Washington's reimbursement scheme. *See Philpott*, 409 U.S. at 416 (rejecting state's argument that its reimbursement program did not violate § 407(a) because the state could have otherwise reduced the public assistance it provided by the amount of the Social Security benefits received).

If the text of § 407 were not clear enough on its face, SSA's own regulations confirm the understanding of "legal process" as not limited to judicially compelled compliance but as encompassing agency compelled compliance with a demand for payment of a debt. SSA defines "legal process" as "the means by which a court (*or agency or official authorized by law*) compels compliance with its demand, generally by court order." POMS GN 02410.001(B)(2) (emphasis added). Here, the Department, as a government agency, obtains reimbursement by seizing Respondent's benefits as it is authorized to do by Washington law. That the Department has been appointed representative payee does not change the fact that the Department takes Respondents' benefits in order to pay a debt.

Judicial opinions provide additional confirmation of this understanding of "legal process." As the Ninth Circuit stated in *Crawford* v. *Gould*, 56 F.3d 1162 (CA 9 1995), § 407(a) "was not designed to preclude use of only the judicial process to obtain Social Security benefits. Rather, § 407(a) is designed 'to protect social security beneficiaries and their dependents from the claims of creditors.'" *Id.* at 1166 (quoting *Fetterusso* v. *New York*, 898 F.2d 322, 327 (CA2 1990)). *See Nelson* v. *Heiss*, 271 F.3d 891, 895 (CA9 2001) (holding that nearly identical anti-alienation provision regarding veterans' benefits prevented prison officials from using benefits deposited into prison trust account to satisfy overdrafts); *Tom* v. *First Am. Credit Union*, 151 F.3d 1289, 1292 (CA10 1988) (holding that bank could not apply extra-judicial setoff remedy to Social Security benefits held in deposit account); *Brinkman* v. *Rahm*, 878 F.2d 263, 265 (CA9 1989) (§ 407(a) prohibits deductions from trust accounts even where the state does not obtain a court order); *Tidwell* v. *Schweiker*, 677 F.2d 560, 568 (CA7 1982) (§ 407(a) prohibits state mental health institutions from taking benefits without voluntary consent); *Ellender* v. *Schweiker*, 575 F. Supp. 590, 597-600 (S.D.N.Y. 1983) (rejecting Social Security Administration's contention that § 407(a) did not prevent voluntary assignments of Social Security benefits).

If creditors like the State of Washington could avoid § 407(a) and obtain repayment of debts simply by being appointed representative payee, then § 407(a) would "enable the state to obtain Social Security benefits through procedures that afford less protection than judicial process affords." *Crawford*, 56 F.3d at 1166. Such a result would be inconsistent with the purpose of § 407(a), which was to ensure that beneficiaries, rather than creditors, have a prior right to Social Security benefits.

The concurring opinion in *Rose* v. *Rose*, 481 U.S. 619 (1987) is not to the contrary, despite the suggestion of the United States. The context of the opinion makes clear that the opinion suggests only that "legal process" *includes* "judicial process." *Id.* at 642-43. The opinion does not suggest that "legal process" is limited to judicial process.

c. *Section 407(a) prohibits Washington's scheme to reimburse the cost of providing state mandated public assistance.*

In *Philpott* and *Bennett*, the Court struck down as violations of § 407(a), attempts by New Jersey and Arkansas to force Social Security beneficiaries to repay public assistance, in the form of welfare payments and food, shelter and housing, respectively. Here, the Department likewise uses Respondents' Social Security benefits to reimburse the State for the cost of providing public assistance in the form of foster care. Just as § 407(a) prohibited the attempts of New Jersey and Arkansas to recoup the cost of providing public assistance, § 407(a) likewise bars Washington's reimbursement scheme.

The Department argues that because it executes its reimbursement scheme in its capacity as representative payee, neither *Philpott* nor *Bennett* applies. The Department's limited understanding of § 407(a), however, cannot be reconciled with the Court's holdings in *Philpott* and *Bennett* that a state cannot

use Social Security benefits to reimburse public assistance payments, even if those payments are used to provide care and maintenance.

Washington's reimbursement scheme is designed to have the same effect as the reimbursement schemes held unconstitutional in *Philpott* and *Bennett*: the goal is to use Social Security benefits in order to reimburse the State for the cost of meeting its statutory obligation to provide public assistance. In its brief before this Court in *Philpott*, the Solicitor General explained why § 407(a)'s prohibition on such repayments does not put the State in any worse position than it would ordinarily be in:

> Under the New Jersey statute, the State had no choice but to provide financial disability assistance when . . . the State determined that [the SSI beneficiary] was disabled and had not other income. In these circumstances, [the State] was required to pay him an amount equal to his need . . . .
>
> The Board, therefore, . . . was performing its statutory responsibilities to aid all disabled indigents without regard to future recoupment. Thus, no unfairness would result if the State were not permitted to reach [the beneficiary's] benefits. The result of denying the State that right is to place it in the same position with respect to [the beneficiary] as it occupies with respect to what probably are the great majority of the recipients of State disability aid, from whom the State is unable to obtain reimbursement.

(Brief for the United States as *Amicus Curiae*, *Philpott* v. *Essex County Welfare Bd.*, 409 U.S. 413 (1973), attached hereto as Exhibit B.)

Like New Jersey, Washington's statutes require the State to provide public assistance (in the form of foster care) to the needy. Like New Jersey, Washington's statutes require the State to provide such aid regardless of the State's ability to obtain reimbursement. Like New Jersey, Washington seeks to obtain reimbursement from the Social Security benefits of those it provides with public assistance. That Washington has chosen to accomplish its reimbursement program by having itself appointed representative payee does not change the fact that the statute pursuant to which the State acts as representative payee "unambiguously allows the State to attach [Social Security] benefits." *Bennett*, 485 U.S. at 397. As discussed above, Washington's mandatory cost recovery regime is "legal process" under § 407(a), and therefore unconstitutional under the Supremacy Clause of the Constitution.

As this Court held in *Philpott*, there is "no reason why a State, performing its statutory duty to take care of the needy, should be in a preferred position as compared with any other creditors." 409 U.S. at 416. The State of Washington cannot establish itself as a "preferred creditor" and take a child's Social Security benefit for its own repayment before other needs of the child are met. It must stand as any other creditor and can be repaid only when such repayment would be in the best interest of the child.[29]

---

29. Washington's reliance on *Mellies* v. *Mellies*, 815 P.2d 114 (Kan. 1991), and *In re the Guardianship of Nelson*, 547 N.W.2d 105 (Minn. Ct. App. 1996), to justify its conduct is misplaced. These cases stand solely for the undisputed proposition that a representative payee may use benefits to provide for a beneficiary's current maintenance. Neither case involved a creditor reimbursement scheme or a failure to act in the best interest of a child.

3. The Department Violates § 407(a) When It Assigns Respondents' Social Security Benefits to Reduce the Cost of Providing Foster Care in Washington.

As discussed in Part A, each year, as part of its budgetary process, the Department reduces it budget request by the total amount of Social Security benefits it expects to receive as representative payee. (Pet. App. 55, ¶¶ 22, 23.) The Department only rarely uses Respondents' benefits for anything other than reimbursement, as any use of Social Security benefits for anything other than reimbursing the Department's foster care expenditures necessarily causes the Department to exceed its budget. This advanced allocation of the beneficiaries' future payments to the State's foster care budget is an unlawful assignment of the beneficiary's right to future payments.

Section 407(a) prohibits such an assignment, even if made voluntarily. *See Ellender* v. *Schweiker*, 575 F. Supp. 590, 598-99 (S.D.N.Y. 1983) ("Permitting OASDI recipients to voluntarily transfer their benefits . . . to the Government creditor is not in the spirit of protection and care mandated by the statutory framework."); *see also Boulter* v. *Boulter*, 930 P.2d 112, 114 (Nev. 1997) ("Moreover, the fact that the property settlement agreement [assigning future benefits] was entered into voluntarily by the parties is without relevance. . . . If voluntary assignments and transfers of future benefits were allowed, the 'security' aspect of the Social Security program would frequently be jeopardized."). Accordingly, while the Department may attempt to argue that the assignment is voluntary because, as representative payee, it is acting on behalf of the foster children, DSHS's actions are barred by § 407(a)'s prohibition of voluntary and involuntary further assignments and transfers alike.

C. THE POSITION ADVANCED BY SSA IN THIS LITIGATION IS NEWLY CRAFTED AND IS NOT ENTITLED TO DEFERENCE

DSHS argues that judicial interpretation of § 405(j) and § 407(a) is unnecessary because the Commissioner has appropriately determined that (1) § 407(a) does not apply to representative payees and (2) payment of current maintenance costs[30] is permissible even when that maintenance would otherwise be provided by the State at no charge.

Under *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), the first question for a court reviewing an agency's construction of a statute that it administers is "whether Congress has directly spoken to the precise question at issue." *Id.* at 842. As to whether representative payees are exempt from the mandates of § 407(a), Congress has addressed the issue, and answered the question in the negative when it enacted § 407(b).

As to the second issue, DSHS contends that two Social Security Rulings from the 1960s, Ruling 66-20,[31] and Ruling 68-18,[32] establish that payment of a beneficiary's costs of care, even when that care is otherwise provided regardless of the beneficiary's ability to pay, is an appropriate expenditure. These Rulings, however, are inapposite. First, the Rulings address direct payment of current maintenance costs, not reimbursement, and definitely not a state-mandated cost recovery

30. Neither of the rulings cited by DSHS addressed a system of reimbursement, but instead dealt with the direct payment of current maintenance costs.

31. Social Security Ruling 66-20, 1960-74 Soc. Sec. Rep. Ser. 385, 1966 WL 3055 (S.S.A.).

32. Social Security Ruling 68-18, 1960-74 Soc. Sec. Rep. Ser. 516, 1968 WL 3918 (S.S.A.).

program. Second, they instruct that even direct payment of such costs is not authorized unless it is in the best interest of the beneficiary.

In Ruling 66-20, the issue was whether it was proper for the representative payee to use benefits to pay for institutional care costs. The institutional costs were, at that time, classified as "current maintenance," if there was a "customary charge." The Ruling found that the charges were customary only if payment could be legally compelled. If the recipient's estate was not liable for the costs of care, then the charge was not for "current maintenance" as the Commissioner had defined the term.

There, state law made the beneficiary liable for the costs of care, and so the Commissioner allowed the payee to make the payment of $50 per month to the institution. Here, it does not. (*See* Brief for the United States as *Amicus Curiae* at 24; Pet. Br. 41 ("the Department does not send a bill to the child for the additional amount of un-reimbursed foster care—as would be appropriate in an actual creditor/debtor relationship")). If Ruling 66-20 has any application to this case, therefore, it is that DSHS should not exercise discretion to repay current maintenance expenditures in the absence of an enforceable legal obligation to do so.

The Department cites Ruling 68-18 for the principle that institutional care costs, paid by public assistance, should be preferred to other needs of the beneficiary. The institutionalized beneficiary's son argued that he, as the representative payee, could prefer payment of his mother's mortgage payment and a bank note to payment of institutional cost, which he argued, would be provided by public assistance. The Commissioner determined, however, that the beneficiary did not qualify for public assistance for the total cost of her care because, to the extent she had Social Security income, she was not deemed "needy." The Commissioner ruled that the mother's need for

current maintenance enjoyed higher priority than debt repayment, which benefited only the representative payee. As applied to the Washington foster children, this Ruling instructs that debts cannot be paid until current and reasonably foreseeable needs of the children are met, especially where debt repayment benefits the representative payee and not the beneficiary.

These Rulings simply do not support DSHS's position. Even if they did, they would not be entitled to deference under *Chevron*, as they are merely ruling letters that, like the Customs ruling letters in *United States* v. *Mead Corp.*, 533 U.S. 218 (2001), "respond to transactions of the moment, . . . are not subject to notice and comment before being issued, may be published but need only be made 'available for public inspection,' . . . and, at the time this action arose, could be modified without notice and comment under most circumstances." *Id.* at 223. Rather, they are entitled to deference only in accordance to their persuasiveness. *Skidmore* v. *Swift & Co.*, 323 U.S. 134 (1944).[33]

Lastly, Petitioner and *amici* argue that the Commissioner has expressed her approval of DSHS's practices by conducting audits of the representative payee program for foster children in Washington and other states and finding that the programs were in compliance and by supporting Petitioner's position in this litigation. (Pet. Br. at 31-32 n.15; Brief of Children's Defense Fund, *et al.*, as *Amici Curiae* at 17; Brief of the States of Florida, Alabama, *et al.*, as *Amici Curiae* at 14-16.) There is simply no authority for DSHS's argument that a Social Security Administration audit—the position of an individual employee as to an individual representative payee program and intended in no way to be an assertion of agency policy—is entitled to

33. Moreover, to the extent these Rulings support Petitioners, they are superceded by the more recent guidance and Administrative Law Judge determinations cited by Respondents. *See supra* 10-11, 26-30.

Chevron deference. *See Mead Corp.*, 533 U.S. at 220 ("'interpretations contained in policy statements, agency manuals, and enforcement guidelines'" are "beyond the *Chevron* pale"). To the contrary, the audit, a three page "trip report" that failed to provide any analysis of the resources or needs of individual children, is entitled to no deference at all. *See National R.R. Passenger Corp. v. Morgan*, 122 S. Ct. 2061, 2071 n.6 (2002) (Interpretive guidelines "are 'entitled to respect' under our decision in *Skidmore v. Swift & Co.* . . . , but only to the extent that those interpretations have the 'power to persuade.' *Christensen v. Harris County*, 529 U.S. 576, 587 . . . (2000).").

While litigation positions may be entitled to *Skidmore* deference, the deference is limited, particularly when the agency's interpretation is "advanced for the first time in a litigation brief." *Mead Corp.*, 533 U.S. at 228. In *Bowen* v. *Georgetown University Hospital*, 488 U.S. 204, 212-13 (1988), this Court addressed a similar situation where an agency advanced a position in litigation that was unsupported by any established regulations or rulings, stating:

> We have never applied the principle of those cases to agency litigating positions that are wholly unsupported by regulations, rulings, or administrative practice. To the contrary, we have declined to give deference to an agency counsel's interpretation of a statute where the agency itself has articulated no position on the question, on the ground that "Congress has delegated to the administrative official and not to appellate counsel the responsibility for elaborating and enforcing statutory commands."

Id. (quoting *Investment Co. Inst.* v. *Camp*, 401 U.S. 617, 628 (1971)).

Accordingly, the fact that the Commissioner, through the Solicitor General, is participating in this litigation in support of the Department does not establish that DSHS's actions are in accordance with established Social Security regulations or rulings. At the least, the question of whether a representative payee must repay the costs of care otherwise provided at no cost to the foster children is unanswered by agency regulations, and at the most, the Rulings put forth by the Department indicate that DSHS's actions are improper. That the Commissioner has now taken a contrary position in its litigation brief is simply of no significance.

CONCLUSION

Based upon the record before it, the Washington Supreme Court concluded that the State's administration of foster children's benefits violated both the letter and spirit of § 405(j) and § 407(a). A State may not use the representative payee program to obtain custody of funds and then use those funds for cost-recovery rather than in the best interest of the beneficiary. Because the Washington Supreme Court determined that DSHS's use of benefits was a cost-recovery program, and not an expenditure for current maintenance in the best interest of the individual child, its decision should be affirmed.

Respectfully submitted,

RICHARD B. PRICE
P.O. Box 1687
Omak, WA 98841
(509) 826-5110

RODNEY M. REINBOLD
P.O. Box 751
Okanogan, WA 98840
(509) 422-3610

TERESA WYNN ROSEBOROUGH
Counsel of Record
DAVID I. ADELMAN
DEBORAH M. DANZIG
JENNIFER N. IDE
JASON C. KIRKHAM
SUTHERLAND ASBILL
& BRENNAN LLP
999 Peachtree Street, N.E.
Atlanta, GA 30309-3996
(404) 853-8000

Attorneys for Respondents

EXHIBIT A — "T-LIST" OF REIMBURSABLE EXPENSES

TRSTFUND MAINTAIN TRUST FUND TABLE TRSTFUND TRSTLST

Sel	Srvc	Sel	Srvc	Sel	Srvc	Sel	Srvc
	2801		2804		2805		2807
	2808		2810		2826		2827
	2828		2829		2830		2831
	2832		2833		2834		2835
	2836		2837		2838		2873
	2874		3101		3104		3114
	3115		3201		3202		3203
	3210		3211		3212		3216
	3217		3218		3219		3223
	3224		3225		3232		3233
	3234		3235		3301		3302
	3406		3410		3412		3415
	3418		3423		3425		3433
	3435		3441		3442		3443
	3444		3447		3448		3450

Options: C = Create R = Review U = Update D = Delete

E2

Exhibit A

TRSTFUND MAINTAIN TRUST FUND TABLE TRSTFUND TRSTLST

Sel	Srvc	Sel	Srvc	Sel	Srvc	Sel	Srvc
	3452		3453		3454		3455
	3456		3457		3458		3459
	3460		3461		3462		3470
	3476		3477		3494		3495
	3901		3902		4940		92801
	92804		92805		92807		92808
	92810		92826		92827		92828
	92829		92830		92831		92832
	92833		92834		92835		92836
	92837		92838		92873		92874
	93101		93104		93114		93115
	93201		93202		93203		93210
	93211		93212		93216		93218
	93219		93223		93224		93225
	93232		93233		93234		93235

Options: C = Create R = Review U = Update D = Delete

TRSTFUND MAINTAIN TRUST FUND TABLE TRSTFUND TRSTLST

SSel	Srvc	Sel Srvc	Sel Srvc	Sel Srvc
93301	93406	93410	93412	
93415	93418	93423	93425	
93433	93435	93441	93442	
93443	93444	93447	93448	
93450	93452	93453	93454	
93455	93456	93457	93458	
93459	93460	93461	93462	
93476	93477	93494	93495	
93901	93902	94940		

Options: C = Create R = Review U = Update D = Delete

EXHIBIT B — BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

No. 71-5656

IN THE SUPREME COURT OF THE UNITED STATES

DORIS PHILPOTT, ET AL., PETITIONERS

v.

ESSEX COUNTY WELFARE BOARD

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

EDWIN N. GRISWOLD,
Solicitor General,

DANIEL M. FRIEDMAN,
Deputy Solicitor General,

KEITH A. JONES,
Assistant to the Solicitor General,
Department of Justice,
Washington, D. C. 30530

WILMOT R. HASTINGS,
General Counsel,

EDWIN YOURMAN,
Assistant General Counsel,

ARTHUR ABRAHAM,
Deputy Assistant General Counsel,
Department of Health, Education and Welfare,
Washington, D. C. 20201

Exhibit B

[Index and Table of Citations Omitted]

Exhibit B

In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-5656

DORIS PHILPOTT, ET AL., PETITIONERS

v.

ESSEX COUNTY WELFARE BOARD

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINIONS BELOW

The opinion of the Supreme Court of New Jersey is reported at 59 N.J. 75, 279 A.2d 806 (Pet. App. A). The opinion of the Appellate Division is reported at 109 N.J. Super. 48, 262, A.2d 227. The opinion of the trial court is reported at 104 N.J. Super. 280, 249 A.2d 639.

JURISDICTION

The judgment of the Supreme Court of New Jersey was entered on July 12, 1971. On October 6, 1971, Mr. Justice Brennan extended the time for filing a petition for a writ of

Exhibit B

certiorari to November 8, 1971. The petition was filed on November 1, 1971, and was granted on May 15, 1972. The jurisdiction of this Court rests on 28 U.S.C 1257(3).

QUESTION PRESENTED

Whether Section 207 of the Social Security Act, which prohibits attachment of federal old-age, survivors, and disability insurance benefits, bars a state from attaching federal disability insurance benefits retroactively paid to a beneficiary and deposited by his trustee in a bank account containing no other funds.

STATUTE INVOLVED

Section 207 of the Social Security Act, 49 Stat. 624, as amended, 42 U.S.C. 407, provides in relevant part:

> * * * [N]one of the moneys paid or payable or rights, existing under this subchapter [relating to old-age, survivors, and disability insurance] shall be subject to execution, levy, attachment, garnishment, or other legal process * * *.

INTEREST OF THE UNITED STATES

Section 223 of the Social Security Act provides for payments of federal disability insurance benefits to alleviate the financial burdens of permanent and total disabilities. Section 207 of the Act protects against frustration of the purpose of these payments by ensuring that the benefits paid will remain available to the disabled beneficiary. The United

States has a substantial interest in this case, since its outcome will affect the extent to which the beneficiaries of federal disability insurance will have the full use of payments made under the Act.

STATEMENT

The State of New Jersey has established a program of financial assistance for persons who are permanently and totally disabled, based upon need. Under this program, the level of benefits is fixed by first determining the amount needed by the beneficiary reasonably to maintain himself and then subtracting from that amount of the beneficiary's actual income from other sources (Pet. App. A, 5). As a condition of receiving assistance, a beneficiary is required to execute an agreement to reimburse the county welfare board, which administers the program, for all payments received thereunder (Pet. App. A, 6). The purpose of this agreement is "to enable the board to obtain reimbursement * * * out of subsequently discovered or acquired real and personal property of the recipient" (*ibid.*).

Petitioner Wilkes applied to respondent county welfare board for assistance under this program in 1966, and he executed the required agreement (Pet. 3). After determining Wilkes' monthly maintenance needs to be $108 and finding that he had no other income, respondent fixed his monthly benefits at that amount and began making assistance payments no later than January 1, 1967 (Pet. App. A, 5). The payments would have been less if Wilkes were receiving federal disability insurance benefits under the Social Security Act, and respondent advised Wilkes to apply to the Social Security Administration for such benefits. (Pet. 3).

In August 1968, Wilkes was awarded retroactive federal disability insurance benefits under Section 223 of the Social Security Act, 42 U.S.C. 423, from May 1966 through June or July 1968 (Pet. App. A, 7). These benefits were calculated on the basis of $69.60 per month for 20 months and $78.70 per month for 6 months, for a total of $1864.20 (*ibid*). A check for that amount was issued to Wilkes (Pet. 4.). Petitioner Philpott, acting as trustee for Wilkes, deposited the check in a bank account (Pet. App. A, 2). The amount of the check constituted the entire balance in this account (*ibid.*).

Respondent immediately brought suit to reach the bank account under the agreement to reimburse (*ibid.*). The trial court held that respondent was barred by Section 207 of the Social Security Act, 42 U.S.C. 407, from recovering any amount from the account (Pet. App. A, 3), and the Appellate Division affirmed (*ibid.*).

The Supreme Court of New Jersey reversed, holding that Section 207 does not bar attachment of the federal payment by respondent under the circumstances of this case. The court stated that the fund attached did not represent current benefits necessary for Wilkes' current support, that the monthly payments which had been made by respondent would have been reduced on account of the federal benefits had they been received concurrently, and therefore that "[t]he equities are all with [respondent]" (Pet. App. A, 11). The court further reasoned that the rationale of Section 204 of the Act, 42 U.S.C. 404, which permits recovery by the federal government in cases of overpayment, should be extended to permit recover by respondent here, because the federal

government contributes one-half of the funds for assistance under the state program and will be entitled to one-half of any recovery in this suit (Pet. App. A, 9-10, 11-12). The court also stated that similar state claims had been honored under the federal veterans' benefits laws (Pet. App. A, 13-14).

Since respondent did not claim a right to the entire federal payment but only to the amount by which its own payments would have been reduced had the federal benefits been received currently rather than retroactively (Pet. App. A, 2, n. 2), and because the stipulated facts were ambiguous as to when respondent actually began making assistance payments (Pet. App. A, 3, n. 3), the court remanded the case for a determination of the period of overlap and the precise amount of respondent's claim (Pet. App. A, 14).

ARGUMENT

SECTION 207 OF THE SOCIAL SECURITY ACT BARS THE RESPONDENT FROM OBTAINING THE RETROACTIVE FEDERAL DISABILITY INSURANCE BENEFITS PAID TO THE BENEFICIARY AND DEPOSITED IN A BANK ACCOUNT.

Introduction and Summary

This case presents a difficult question of statutory interpretation. On its face, Section 207 of the Social Security Act appears to bar the State of New Jersey from obtaining the federal disability insurance paid retroactively to Wilkes. The language is sweeping and unqualified: "none of the moneys paid or payable under this subchapter shall be subject

to execution, levy, attachment, garnishment, or other legal process."[1] The amount paid to Wilkes as retroactive benefits was "moneys paid * * * under this subchapter," and the suit the state brought to reach this money in the bank account was an attempt to "subject [it] to * * * levy, attachment * * * or other legal process." The statute, therefore, appears to bar the state's attempt to obtain this money.[2]

1. There is only exception to the sweeping exemption of Section 207, and that arises under another statutory provision. Section 6331(a) of the Internal Revenue Code of 1954, 26 U.S.C. 6331(a), makes subject to levy for federal tax liability "all property and rights to property" of the person liable for the tax. Section 6334 of the Code, 26 U.S.C. 6334, limits exemptions form the levy to eight specific categories and provides that no other property or rights to property shall be exempt "[n]otwithstanding any other law of the United States." Both the Treasury Department and the Department of Health, Education, and Welfare recognize, accordingly, that social security benefits may be subjected to levy under the foregoing sections.

2. Except for the court below in the present case, we know of no state court of last resort that has permitted attachment of social security benefits either paid or payable.

The case most in point, *Century Indemnity Co.* v. *Mead*, 121 Vt. 434, 159 A. 2d 325, held that Section 207 bars attachment by a judgment creditor not only for future social security payments but also of a bank account in which past social security payments had been deposited. *Ponath* v. *Hedrick*, 22 Wis. 2d 382, 126 N.W. 2d 28, held that under state law social security benefits are not includable as income in determining an individual's ability to pay for the support of a dependent relative; the court also held, however, that Section 207 did not preclude treating such benefits as income. The Texas Court of Civil Appeals, an intermediate appellate court, relied upon *dicta* in the two federal cases that have considered the

(Cont'd)

The law, however, frequently has declined to give broad and unqualified language and principles their full sweep when to do so would produce unfair or unjust results. Even such words as "none" and "no" do not always mean what they say.[3] And in the case of spendthrift trusts, whose very purpose is to protect a beneficiary against his own improvidence by preventing his creditors from reaching rights under the trust, creditors who supply necessaries to the beneficiary have been permitted to recover therefor from the trust. See A.L.I Restaurant, *Trusts*, Section 157(b). Thus this Court should not assume that Congress imposed an absolute bar upon the attachment of retroactively paid social security moneys in any circumstances, merely because of the sweeping language of Section 207, if that results does not comport with the proper effectuation of the purposes and policies of the Social Security Act.

The legislative history of Section 207 provides no guidance in the resolution of this problem. The substance of

(Cont'd)
Section (*Beers* v. *Federal Security Administrator*, 172 F. 2d 34 (C.A. 2), and *Ewing* v. *Gardner*, 185 F. 2d 781 (C.A. 6), reversed on other grounds, 341, U.S. 321, both discussed in footnote 6, *infra*, p. 13) in permitting a creditor to reach accumulated survivors insurance benefits held by a guardian of minor children. *Texas Baptist Children's Home of Round Rock* v. *Corbitt*, 321 S.W. 2d 610.

3. *E.g.*, *Miller* v. *Standard Nut Margarine Company of Florida*, 284 U.S. 498 (interpreting the predecessor of Section 7421 of the Internal Revenue Code of 1954, 26 U.S.C. 7421(a), which provided flatly that "[n]o suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court," as nevertheless being subject to exception in cases of "extraordinary and exceptional circumstances").

the present language of Section 207 has been in the Social Security Act since it was first enacted in 1935.[4] The Committee reports on this provision merely paraphrase the language of the statue itself. H. Rep. No. 615, 74th Cong., 1st Sess., 21; S. Rep. No 628, 74th Cong., 1st Sess., 32. Similarly, when Congress reenacted this provision in the Social Security Amendments of 1939, the Committees stated that the provision "provides that a right to payment under this title shall not be transferable or assignable nor shall any moneys paid or payable be subject to execution or other legal process." H. Rep. No. 728, 76th Cong., 1st Sess., 45; S. Rep. No 734, 76th Cong., 1st Sess., 53.

Since the provision protected against the attachment of "moneys paid * * * under this title," it automatically covered new social security programs as they were enacted, without the necessity of explicit Congressional action. Thus, when the program of federal disability insurance was established by the Social Security Amendments Act of 1956, P.L. 880, 70 Stat. 807, payments thereunder also came under the protection of Section 207.

A fair reading of this history, we believe, suggests that in Section 207 Congress endeavored to protect social security beneficiaries from having their payments subjected to creditors' claims, but that it did not indicate any views with respect to whether particular exceptional circumstances might justify exceptions to this broad provisions. Congress did not intend creditors to be able to satisfy their claims out of social security benefits. The purpose of the federal disability

4. The prohibition against attachment was originally contained in Section 208 of the Social Security Act of 1935, 49 Stat. 620, 625.

insurance program was to provide benefits to individuals who are seriously disabled and unable to work, and to their dependents, and thereby to alleviate the financial burdens of disability, including "the heavy weight of increased medical and hospital bills, nursing services and drugs, the loss of [the disabled individual's] regular income, and the continued financial responsibility for the support of his wife the education and care of his children." 102 Cong. Rec. 13037 (1956). The provision in Section 207 that "none of the moneys paid * * * shall be subject to * * * legal process" guards against frustration of this basic purpose by insuring that moneys designed for these vital purposes are used for those objectives and not diverted to meet the claims of creditors. Accordingly, if exceptions are to be created to the sweeping language of Section 207, the must be consistent with the foregoing purpose.

Assuming that Section 207 may admit of exceptions in special circumstances, the question in this case is whether the circumstances under which the State of New Jersey provided Wilkes with necessary support during the period when he was not receiving federal disability insurance payments entitles the State to reach those payments when retroactively made. Although the question is not free from difficulty, it is our conclusion that Section 207 bars the State from obtaining the money. It is our argument that the equitable considerations upon which the State relies are not sufficiently compelling to justify an exception here; that the fact that the moneys have been deposited in a bank account does not warrant a different result; and that Section 204 of the Act, which permits the Secretary to recover overpayment

of benefits and on which the Supreme Court of New Jersey apparently relied, does not support the State's attachment of the federal payments. We discuss each of these points in turn.

A. The Equitable Considerations Upon Which the Supreme Court of New Jersey Relied Do Not Justify Permitting the State to Obtain the Federal Disability Insurance Benefits Paid to Wilkes.

In holding that the respondent Board could reach the federal disability insurance payments made to Wilkes, the Supreme Court of New Jersey pointed out that the Board had provided Wilkes with necessary funds for this support during the period when he was not receiving federal payments; that, as shown by the subsequent retroactive award of the payments, he was entitled to them during that period; that is Wilkes had currently received the federal payments to which he was entitled, the State's payments to him would have been smaller; and that the retroactive federal payment was not necessary for Wilkes' current support.[5] Although these are appealing considerations, we do not believe that they are sufficient to fit within any justifiable exception to the unqualified language of Section 207, particularly in favor of a State.

Under the New Jersey statute, the State had no choice but to provide financial disability assistance when, upon the

5. There is nothing in the record that supports the latter statement. The record does not show Wilkes' medical expenses or general financial condition. The retroactive payment may have been necessary to meet his current living expenses, in whole or in part, including special needs arising from his disability.

filing of Wilkes' application for assistance in 1966, the State determined that he was disabled and had no other income. In these circumstances, it was required to pay him an amount equal to his need. Although the State required Wilkes to execute a reimbursement agreement, its purpose was "to enable the Board to obtain reimbursement * * * out of subsequently discovered or acquired real and personal property of the recipient" (Pet. App. A, 6).

The Board, therefore was not volunteering any funds or services as an act of mercy or aid to help Wilkes, but was performing its statutory responsibilities to aid all disabled indigents without regard to future recoupment. Thus, no unfairness would result if the State were not permitted to reach Wilkes' benefits. The result of denying the State that right is to place it in the same position with respect to Wilkes as it occupies with respect to what probably are the great majority of the recipients of State disability aid, from whom the State is unable to obtain reimbursement. The fact that Wilkes executed a formal reimbursement agreement should not make any difference; despite that agreement, we think that the State should be in no better position than an ordinary creditor, and Section 207 precludes creditors generally form obtaining social security payments.

Indeed, any hardship the State might be thought to suffer from this result is substantially diminished by the fact that a portion of any recovery it might obtain would inure to the benefit of the federal government. As the Supreme Court of New Jersey recognized, since the federal government provides one-half of the funds for assistance under the New Jersey program of disability relief, "the state, upon recovery

of any amount by way of reimbursement, must account to the federal government for the latter's share in the same proportion as it was contributed." (Pet. App. A, 10).

B. Section 207 Covers Federal Benefits That Have Been Deposited in a Bank Account After Payment.

The fact that the moneys paid to Wilkes have been deposited in a bank account does not remove the moneys from the protection of Section 207. That section bars attachment of a bank account constituting the proceeds of a check made in payment of disability insurance benefits. *Century Indemnity Co.* v. *Mead*, *supra*. The statue expressly covers "money paid"[6] and it prohibits "execution, levy, [and] attachment," legal processes which, unlike garnishment, relate to assets in hand rather than to rights to future payments. Furthermore, protection of social security benefits deposited in bank accounts is necessary for full effectuation of the Congressional intent that payments be insulated from creditors and remain available to beneficiaries.

---

6. Despite this language, two courts of appeals have expressed in *dicta*, the brief that the section covers only future payments. *Beers* v. *Federal Security Administrator*, 172 F. 2d 34 (C.A. 2); *Ewing* v. *Gardner*, 185 F. 2d 781 (C.A. 6), reversed on other grounds, 341 U.S. 321. Those cases involved efforts by personal representatives of deceased beneficiaries to recover the unpaid benefits which were accrued at the date of death; Section 207 was inapplicable because the property rights in question had passed to the representative by operation of law and were not being made subject to "execution, levy, attachment, garnishment, or other legal process * * *."

This Court has reached the same conclusion in a series of cases involving veterans' benefits exemption statutes. In *Porter* v. *Aetna Casualty Co.*, 370 U.S. 159, the Court summarized (at 160-161) its decisions:

> Since 1873 it has been the policy of the Congress to exempt veterans' benefits from creditor actions as well as from taxation. In 1933 in *Trotter* v. *Tennessee*, 290 U.S. 354, the Court * * * held that the exemption spent its force when the benefit funds "lost the quality of moneys" and were converted into "permanent investments." This distinction was adopted by the Congress when the [Word War Veterans' Act of 1924] was amended * * * to provide, *inter alia*, that such payments shall be exempt "either before or after receipt by the beneficiary" but that the exemption shall not "extend to any property purchased in part or wholly out of such payments." Thereafter in *Lawrence* v. *Shaw*, 300 U.S. 245 (1937), the Court held that bank credits derived from veterans' benefits were within the exemption, the test being whether as to deposited the benefits remained subject to demand and use as the needs of the veteran for support and maintenance required. It was noted that the allowance of interest or such deposits would not destroy the exemption. [Footnotes omitted.]

The Court held in *Porter* that 38 U.S.C. 3101, which provides that veterans' "payments * * * shall be exempt from the claim of creditors, and shall not be liable to

attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary," bars attachment by a creditor of benefits deposited in a savings and loan association on behalf of a veteran, on the ground that the deposit retained the "quality of moneys" and did not constitute a "permanent investment."

The same principle is also appropriate here: the protection extended by Section 207 to "moneys paid" should remain in force as long as the payment retains the "quality of moneys" and is not converted into a "permanent investment." Under this standard, this case is governed by *Lawrence* v. *Shaw*, 300 U.S. 245, which held that the immunity afforded veterans' benefits continued after their deposit in a bank account. Here, as in both *Lawrence* and *Porter*, the funds on deposit were readily withdrawable and retained the quality of money; there is no evidence that these funds, by their mere deposit, had been transformed into a permanent investment.[7]

In reaching a contrary result, the court below cited a separate line of veterans' benefit case, dealing with the issue whether a State which has provided care and maintenance of an incompetent veteran is a "creditor" for purposes of 38 U.S.C. 3101. There decisions generally stand for the propositions that insofar as a State's claim relates to amounts expended before the appointment of a committee of an

---

7. The court in *Lawrence* noted (at 250) that "deposits in bank may be made under a special agreement by which the deposits assume the character of investments and would lose immunity accordingly [but no] such agreement is show here." There has been no showing of any such special agreement in this case either.

incompetent veteran, the State is a "creditor" and therefore may not recover form benefits subsequently paid to the committee, but that the State is not a "creditor" as to subsistence charges paid after appointment of the committee and may therefore recover such amounts form the committee. *See, e.g., Savoid* v. *District of Columbia*, 288 F.2d 851 (C.A. D.C.); *District of Columbia* v. *Reilly*, 249 F.2d 524 (C.A. D.C.); *Department of Public Welfare* v. *Sevcik*, 18 Ill. 2d 449, 164 N.E. 2d 10; *In re Bemowski's Guardianship*, 3 Wis. 2d 133, 88 N.W. 2d 22; *In re Lewis' Estate*, 287 Mich. 179, 283 N.W. 21; *In re Ferarazza's Estate*, 219 Cal. 668, 28 P. 2d 670.

Those decisions seem irrelevant to the issue in this case. Unlike 38 U.S.C. 3101, the statutory provision involved here (Section 207) does not refer to "claim of creditors" but rather interposes a broad bar against the use of any legal process to reach social security benefits. The construction of "creditors" relied upon in the veterans' benefit cases, itself somewhat strained, therefore would not justify an exception to Section 207.[8]

8. As petitioners suggest (Pet. 6, n. 2) the veterans' benefits cases involve the use of current funds for the current support of an incompetent; those funds would have been used by the veteran himself or his committee for his care and maintenance if it had not been provided by the State. Those cases are thus factually distinguishable form the case here, where the State is not seeking to recover for any assistance it is currently providing and the beneficiary's trustee seeks to retain the funds for the use of the beneficiary.

C. Section 204 of the Act, Which Permits the Secretary to Recover Overpayments of Benefits, Does Not Support the State's Attachment of the Federal Payments in This Case.

The court below apparently relied in part upon Section 204 of the Act, 42 U.S.C. 404, which permits the Secretary to recover overpayments of old-age, survivors, or disability insurance benefits. This reliance is not warranted. There has been no overpayment of federal disability insurance benefits here; and the Secretary is not seeking recovery, directly or indirectly, of any such benefits. The pecuniary interest of the United States in the outcome of this case, resulting from the State's duty to remit to the United States its aliquot share of any recovery from beneficiaries (see [E15-16], *supra*), is not within the ambit of Section 204. That Section is limited to federal payments to beneficiaries and dos not apply to federal contributions to state assistance programs.

Exhibit B

CONCLUSION

For the foregoing reasons, the judgment of the Supreme Court of New Jersey should be reversed.

Respectfully submitted,

ERWIN N. GRISWOLD
Solicitor General

DANIEL M. FRIEDMAN,
Deputy Solicitor General

Keith A. Jones,
Assistant to the Solicitor General.

WILMONT R. HASTINGS
General Counsel,

EDWIN YOURMAN,
Assistant General Counsel,

ARTHUR ABRAHAM,
Deputy Assistant General Counsel,
Department of Health, Education and Welfare.

AUGUST 1972.

EXHIBIT C — EXCERPTS FROM GUIDE FOR ORGANIZATIONAL REPRESENTATIVE PAYEES

Social Security

Representative Payment Program

Guide for Organizational Representative Payees

Exhibit C

[5] **What is a representative payee?**

A representative payee is an individual or organization that receives Social Security and/or SSI payments for someone who cannot manage or direct someone else to manage his or her money. Your main responsibility as a representative payee is to use the funds to pay for the current and foreseeable needs of the beneficiary. (Refer to pages 8-9 for the duties of a representative payee.) With certain exceptions, a representative payee is **not** paid for services. However, see below for a description of certain representative payees who are authorized to collect a fee.

There are two kinds of representative payees:

1. **Individual representative payee** – This could be someone that a beneficiary lives with or a family member or friend who does not live with the beneficiary. It could also be a lawyer, a legal guardian, or a volunteer for a government or non-profit agency.

2. **Organizational representative payee** – This category includes social service agencies, institutions, an official of a state or local government agency or a financial organization. Some organizational payees, called **Fee-for-Service Payees**, are permitted to charge the beneficiary a fee for their services. The payee must file a request and be approved before they can collect a fee.

Note: Having power of attorney or a joint bank account with the beneficiary is **not** the same thing as being a representative payee.

Exhibit C

[36] **Frequently asked questions**

* * *

I am representative payee for a child who wants to go on vacation and needs one-on-one assistance. Can her funds be used to pay for her personal assistant's expenses on the trip?

Any use of the beneficiary's funds must show a correlation between the expense incurred and a direct benefit to the individual beneficiary. The use of a beneficiary's funds to pay the expenses of a personal [37] assistant may be proper if the personal assistant serves as a volunteer and is not receiving any other source of remuneration from the representative payee's organization. However, if the personal assistant is an employee of the agency and on duty, the expenses should be paid by the agency. Of course, the expense must be reasonable in relation to the beneficiary's funds and the beneficiary must not have unmet current or foreseeable needs. You must obtain SSA's approval before using the funds for this purpose.

* * * *

(18)

Supreme Court, U.S.
FILED
NOV 13 2002
OFFICE OF THE CLERK

No. 01-1420

IN THE SUPREME COURT OF THE UNITED STATES

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, ET AL.,

Petitioners,

V.

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, GUARDIAN, AND OTHER PERSONS SIMILARLY SITUATED,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

REPLY BRIEF FOR THE PETITIONERS

CHRISTINE O. GREGOIRE
Attorney General

William Berggren Collins
Sr. Assistant Attorney General
Counsel of Record

1125 Washington Street SE
Olympia, WA 98504-0100
360-753-6245

Walter Dellinger
Pamela Harris
O'Melveny & Myers

555 13th Street NW
Washington, D.C. 20004
202-383-5300

Counsel For Petitioners

28 pp

TABLE OF CONTENTS

A. Introduction And Summary 1
B. The Department's Use Of Benefits To Pay For Current Maintenance Does Not Violate § 407(a) 2
C. The Department's Use Of Benefits Does Not Violate § 405(j) 9
D. Conclusion 20

TABLE OF AUTHORITIES

Cases

Barnhart v. Walton
122 S. Ct. 1265 (2002) 12

Bennett v. Arkansas
485 U.S. 395 (1988) 5, 6

Boulter v. Boulter
930 P.2d 112 (Nev. 1997) 7

Hisquierdo v. Hisquierdo
439 U.S. 572 (1979) 8

Hurd v. Illinois Bell Tel. Co.
136 F. Supp. 125 (N.D. Ill. 1955),
aff'd, 234 F.2d 942 (7th Cir. 1956),
cert denied sub nom
Seybold v. Western Elec. Co.,
352 U.S. 918 (1956) 6

Irvine v. People of California
347 U.S. 128 (1954) 10

Lamb v. Connecticut Gen. Life Ins. Co.
643 F.2d 108 (3rd Cir. 1981),
cert denied, 454 U.S. 836 (1981) 6

Philpott v. Essex County Welfare Board
409 U.S. 413 (1973) 5, 6

Porter v. Aetna Casualty & Surety Co.
370 U.S. 159 (1962) 7

Rosa v. Warner Elec. Contracting
870 P.2d 1210 (Colo. 1994),
cert denied, 513 U.S. 814 (1994) 6

Sullivan v. Stroop
496 U.S. 478 (1990) 6

Statutes

Title XVI, 42 U.S.C. §§ 1381 *et seq.* 5

Aug. 10, 1939, ch. 666, Title II,
§ 205(j), 53 Stat. 1372 8

Aug. 14, 1935, ch. 531, Title II,
§ 208, 49 Stat. 625 8

42 U.S.C. § 405(j) 7-10, 13-14, 16, 20

42 U.S.C. § 407(a) 1-3, 5-10

42 U.S.C. § 407(b) 6, 7

Wash. Rev. Code § 74.13.060 4

Wash. Rev. Code § 74.13.060(1) 4, 14

Wash. Rev. Code § 74.13.060(2) 4, 14

Regulations

20 C.F.R. § 404.2040(a)(1) 8, 11

20 C.F.R. § 404.2040(d) 18

Wash. Admin. Code § 388-25-0210 4

Wash. Admin. Code § 388-25-0210(1) 4

Rules

Rule 14.1(a) 9

Other Authorities

47 Fed. Reg. 30,468 (1982) 11

H.R. Conf. Rep. No. 98-47,
98th Cong. 1st Sess. 115, 153,
reprinted in 1983 U.S.C.C.A.N. 404 8

Robert Stern, *et al.*,
Supreme Court Practice (8th ed. 2002) 9, 10

A. Introduction And Summary

This case is about one question and one question only: Whether the Washington State Department of Social and Health Services (Department or DSHS), as representative payee, violates 42 U.S.C. § 407(a) when it uses social security benefits to pay for a beneficiary's current care. That is the question on which this Court granted certiorari. Cert. Pet. at i. Contrary to respondents' claim, it is quite obviously the question decided by the Washington Supreme Court: "We hold DSHS as representative payee violates § 407(a) when it applies Social Security benefits to the current maintenance needs of foster children[.]" App. Pet. at 2. And that holding is the entire basis for the decision below.

This holding by the Washington Supreme Court is incorrect. Social security statutes and regulations explicitly authorize representative payees to use benefits to pay for a beneficiary's current care. Pet'r Br. at 21-23. The anti-alienation provision of § 407(a) does not prohibit what these statutes and regulations permit. Instead, § 407(a) is limited to compulsory or coercive processes and thus has no application to voluntary decisions by duly designated payees to use benefits in a manner specifically approved by regulation. Pet'r Br. at 23-30.

In this Court, respondents abandon the decision and reasoning of the Washington Supreme Court. Respondents disclaim the express holding of the court below, suggesting in a footnote that the Washington Supreme Court may have misspoken when it announced its holding. Resp't Br. at 17 n.14. They now agree that representative payees may use social security benefits to pay for current

maintenance. Resp't Br. at 1. And they disavow any claim that federal social security benefits must add to, rather than replace, state assistance (Resp't Br. at 37 n.28)— the very premise of the decision below. App. Pet. at 18 (under proper application of § 407(a), "the child's SSI will be available to benefit the child *in addition* to the state-funded foster care program") (emphasis added).

Having abandoned the actual decision below, respondents are left to argue about accounting procedures. Respondents appear to claim that DSHS violates the Social Security Act because it uses an accounting system that pays for care first and later uses social security benefits to reimburse the cost of that care. But, of course, nothing in the Act or its implementing regulations prescribes any particular accounting procedure, or prohibits the one selected by DSHS. Respondents also claim now that DSHS does not, in fact, use the benefits in question to pay for current maintenance—a point the court below never doubted, and one well outside both the holding below and the question presented to this Court. In any event, respondents are wrong, and their claim misconstrues both Washington law and the record.

B. The Department's Use Of Benefits To Pay For Current Maintenance Does Not Violate § 407(a)

1. Section 407(a) provides that social security benefits shall not "be subject to execution, levy, attachment, garnishment, or other legal process". Respondents claim that the Department's use of benefits as representative payee constitutes prohibited "other legal process". The United States argues persuasively that "other legal process" is limited to *judicial* process. Br. United States Amicus

Curiae at 21-22. Some lower courts have held that the term also extends to other efforts to obtain benefits through coercion. *See* Pet'r Br. at 23-24. But as even respondents appear to concede, "legal process" must, at a minimum, involve the kind of compulsion inherent in the other forms of process specified by § 407(a)—levy, execution, attachment, and garnishment. Resp't Br. at 39 (relying on agency definition of "legal process" to include "compel[led] compliance").

The Court need not resolve in this case whether "other legal process" is limited to judicial process, because respondents cannot satisfy even the broader definition that they endorse. The Department's use of benefits to pay for current maintenance is entirely voluntary and involves no "compelled compliance" or coercion of any sort. The Social Security Administration (SSA) sends the Department the benefits, and the Department, as authorized representative payee, uses the funds in its possession in accordance with social security regulations. There is no coercion or compulsion anywhere in this picture.

Respondents' argument to the contrary seems to rest on the premise that the Department is "required", under Washington law, to "seize" benefits for its own reimbursement. Resp't Br. at 38, 39. Simply labeling the process by which the Department uses funds in its own possession as a "seizure"—or, for that matter, a "scheme" (*see* Resp't Br. at 40)—does not bring it within the terms of § 407(a). But in any event, the claim that Washington law requires the Department to reimburse itself for the cost of foster care misstates Washington law and is directly refuted by the record.

Respondents appear to rely for this point on Wash. Rev. Code § 74.13.060, discussed elsewhere in their brief. Resp't Br. at 6, 22. But that statute expressly grants substantial discretion to the Secretary of DSHS when acting as representative payee. First, the Secretary may disburse benefits "for such personal needs of such person as the secretary may deem proper and necessary". Wash. Rev. Code § 74.13.060(1). Second, the "secretary *may* apply such funds against the amount of public assistance otherwise payable to such person". Wash. Rev. Code § 74.13.060(2) (emphasis added). Reimbursement is not mandatory, but rather discretionary with the Secretary.[1]

Respondents' argument also is inconsistent with the record in this case, which proves that the Department does forgo reimbursement for foster care and uses social security benefits for special needs. App. Pet. at 56-58, ¶ 30-37. JA at 139-140, ¶ 9-10; 149-180; 195, ¶ 11. Using benefits for special needs must be approved by the Trust Fund Unit of the Department. JA at 57, ¶ 31. However, the standard for approving such expenditures is not the impact on DSHS's budget, but rather "direct benefit" to the beneficiary. JA at 57, ¶ 33.

[1] Respondents also point to Wash. Admin. Code § 388-25-0210 to support their claim that the Department "must" use the benefits to pay for foster care. Resp't Br. at 26. But Wash. Admin. Code § 388-25-0210(1) provides that the use of funds is limited "by the terms and conditions of the receipt of the income". Social security benefits received by the Department must be used in accordance with social security statutes and regulations. Respondents' reading of this rule is also inconsistent with the discretion granted the Secretary in Wash. Rev. Code 74.13.060(1) and (2), and the Department's actual practices, which establish that the Department uses benefits for both current maintenance and special needs.

In sum, the premise for respondents' argument that the Department is "seizing" social security benefits and thus violating § 407(a) is false. State law does not mandate reimbursement, and the Department properly exercises the discretion appropriate to a representative payee.

2. Like the court below, respondents rely heavily on *Philpott v. Essex County Welfare Board*, 409 U.S. 413 (1973), and *Bennett v. Arkansas*, 485 U.S. 395 (1988), for the proposition that § 407(a) bars the use of social security benefits to pay for current maintenance. App. Pet. at 20-21; Resp't Br. at 40-42. But as we already have shown, those cases have no bearing here. In neither of those cases was the state a representative payee. Therefore, in both, the state was required to undertake the kind of formal judicial process (a lawsuit in *Philpott* and a court attachment action in *Bennett*) that is obviously covered by the terms of § 407(a). Pet'r Br. at 24-25.

Respondents' argument boils down to the claim that the *effect* of the Department's accounting system on the beneficiary is the same as if the Department had used formal judicial process to attach benefits, in the manner barred by § 407(a) and condemned in *Philpott* and *Bennett*. In other words, the Department will pay out fewer state dollars for foster care because it uses social security benefits to pay for this care, just as if the state had legally attached or garnished the benefits. Resp't Br. at 40-41. This argument ignores the discretion the Department exercises in carrying out its duties as representative payee. Moreover, this approach proves far to much. Even respondents do not and cannot argue that either § 407(a) nor any other provision of federal law would bar DSHS from

transferring the entire social security benefit directly to the foster parent, and then separately reducing its own monthly foster care payment by exactly the same amount. *See* Resp't Br. at 37 n.28; *see also* Br. United States Amicus Curiae at 28.[2] But under respondents' "effect" theory, that system, too, would run afoul of *Philpott* and *Bennett* by using social security benefits to relieve the state of foster-care costs it otherwise would bear.

The answer, of course, is that neither § 407(a) nor *Philpott* and *Bennett* stand for the sweeping proposition suggested by respondents. They simply prohibit the state—or any other party—from using compulsory process to gain access to social security benefits. When, as here, the state as representative payee is already in possession of the benefits and uses them for authorized purposes, they have no application at all. Simply put, the process is voluntary, not compulsory.

3. Respondents mistakenly rely on 42 U.S.C. § 407(b) to support their case. Section 407(b) provides that no other provision of law modifies § 407(a) "except to the extent it does so by express reference

[2] This proposition is well-established by the case law. *See, e.g., Sullivan v. Stroop*, 496 U.S. 478 (1990) (aid provided under Aid to Families with Dependent Children program may be reduced by amount of Title II benefits); *Hurd v. Illinois Bell Tel. Co.*, 136 F. Supp. 125, 142 (N.D. Ill. 1955), *aff'd*, 234 F.2d 942 (7th Cir. 1956), *cert denied sub nom Seybold v. Western Elec. Co.*, 352 U.S. 918 (1956) (offsetting social security benefits against employer's pension plan does not violate § 407(a)); *Lamb v. Connecticut Gen. Life Ins. Co.*, 643 F.2d 108 (3rd Cir. 1981), *cert denied*, 454 U.S. 836 (1981) (same); *Rosa v. Warner Elec. Contracting*, 870 P.2d 1210 (Colo. 1994), *cert denied*, 513 U.S. 814 (1994) (reducing state workers compensation benefits by amount of social security benefits does not violate § 407(a)).

to this section". App. Pet. at 170. According to respondents, since 42 U.S.C. § 405(j)—authorizing the appointment of representative payees—does not expressly mention § 407(a), § 407(a) does not have any exception for representative payees. Resp't Br. at 34.

This argument misconstrues the Department's position. First of all, DSHS is not seeking an "exception" to § 407(a). The Department needs no exception because, by its terms, § 407(a) does not prohibit what the Department is doing. Second, the Department does not claim that § 407(a) can never be applied to a representative payee.[3] Rather, § 407(a) does not prohibit a representative payee—appointed by the Commissioner pursuant to § 405(j)—from using the benefits in accordance with the social security regulations.

Section 407(b) does not require a different result. Indeed, the purpose of § 407(a) is consistent with the purpose of § 405(j). The purpose of anti-alienation statutes such as § 407(a) is to preserve benefits so they can be used to support the beneficiary. *Porter v. Aetna Casualty & Surety Co.*, 370 U.S. 159, 162 (1962) (the purpose of the anti-alienation provision protecting veterans benefits is

[3] Like a beneficiary, a representative payee may be subject to § 407(a). For example, in *Boulter v. Boulter*, 930 P.2d 112 (Nev. 1997), the state court ruled that § 407(a) prohibited a court from enforcing an agreement by a beneficiary husband to pay half of his social security benefits to his former wife. Section 407(a) would also prohibit judicial enforcement of such an agreement if made by a representative payee. However, § 407(a) does not prohibit a beneficiary or a representative payee—who is acting within the social security regulations—from spending benefits after they are received.

to "protect funds granted by the Congress for the maintenance and support of the beneficiaries thereof"); *Hisquierdo v. Hisquierdo*, 439 U.S. 572, 584 (1979) (the purpose of the anti-alienation provision protecting railroad retirement benefits is to "ensure[] that the benefits actually reach the beneficiary"). This purpose is consistent with § 405(j) and the implementing regulations. Section 405(j) requires the representative payee to use social security funds for the benefit of the beneficiary. Social security regulations provide that it is in the best interest of the beneficiary to use the benefits for current maintenance. 20 C.F.R. § 404.2040(a)(1).

Sections 407(a) and 405(j) have coexisted in the social security law for over 60 years. Section 407(a) was originally enacted in 1935. Aug. 14, 1935, ch. 531, Title II, § 208, 49 Stat. 625. Section 405(j) was enacted in 1939. Aug. 10, 1939, ch. 666, Title II, § 205(j), 53 Stat. 1372. And § 407(b) was not enacted to prevent a representative payee from using the benefits to pay for the beneficiary's current care. It was enacted to overturn court decisions that did not apply § 407(a) and, instead, authorized coercive legal process to take social security benefits away from the beneficiary. *See* H.R. Conf. Rep. No. 98-47, 98th Cong. 1st Sess. 115, 153, *reprinted in* 1983 U.S.C.C.A.N. 404, 443 ("some bankruptcy courts have considered social security and SSI benefits . . . to be income . . . and have ordered SSA . . . to send all or a part of the debtor's benefit check to the trustee in bankruptcy.").

4. There is no merit to respondents' argument that the Department violates § 407(a) by taking future social security benefits into account in its budgeting process. According to respondents, the

state budgeting process constitutes an "assignment" of benefits prohibited by § 407(a). Resp't Br. at 43. But attaching the label "assignment" does not make it so, and the state's budget is simply a forecast of the dollars needed to operate the program, not an assignment of benefits. Nor, as discussed above, B.2 *supra* pp. 5-6, is there any reason why a state may not take federal social security benefits into account in setting its budget. The process respondents describe is no different from a parent taking into account the family's resources, including social security benefits, in making the yearly budget for the family—except, instead of one or two children, the Department is responsible for thousands of foster children.

C. The Department's Use Of Benefits Does Not Violate § 405(j)

1. Respondents' claims regarding § 405(j) are not properly before this Court. Respondents, in their opposition to certiorari, objected at length to petitioners' formulation of the question presented. *See* Cert. Opp. i. Fully apprised of their concerns, the Court nevertheless granted certiorari, without modification, of the question presented by petitioner: "Does a representative payee violate 42 U.S.C. § *407(a)* when the payee uses the benefits to pay for he beneficiary's current care?" Cert. Pet. at i (emphasis added). There is no reason in this case for the Court to depart from its policy of addressing only those questions on which it has granted certiorari. *See* Rule 14.1(a). *See also* Robert Stern, *et al., Supreme Court Practice* 420 (8th ed. 2002) (to "allow a petitioner, or a respondent, to argue other questions would subvert the theory underlying the certiorari process"); *Irvine v. People of*

California, 347 U.S. 128, 129 (1954) (refusing to consider additional questions argued by petitioner in merits brief).

Indeed, a departure here would be especially unfortunate. Were the Court to consider respondents' § 405(j) claim now, it would have to do so without the benefit of a lower court's analysis and ruling. The Washington Supreme Court's decision rests on § 407(a), not § 405(j): what respondents call an "express[ion]" of "doubt" about whether DSHS's system complies with certain SSA regulations (Resp't Br. at 30), does not constitute a holding on respondents' new statutory claim.[4] That makes this case a particularly poor vehicle for addressing a claim that falls outside the questions presented. *See* Stern, at 420 ("injecting new issues into the case at this stage deprives the Justices of the benefit of the lower court's refinement and resolution of the issue").

2. In any event, there is no merit to respondents' claim that the Department's accounting system that provides for reimbursement violates § 405(j). The gist of respondents' argument is that using benefits to pay for current maintenance violates the regulatory mandate that benefits be used "in the best interests" of the beneficiary. Resp't Br. at 20-22. As we explained in our opening brief, however, § 405(j) and governing SSA regulations

[4] The fact that the lower court did not rule on respondents' § 405(j) claim is not surprising, given that respondents did not raise it clearly below. Neither respondents' complaint nor their amended complaint alleged a violation of § 405(j). They only alleged a violation of § 407(a). JA at 17, ¶ 4.8; 113, ¶ 4.8. And although respondents discussed the regulations promulgated under § 405(j) in a supplemental brief before the Washington Supreme Court, that discussion appeared as support for their § 407(a) argument, not as a stand-alone claim.

expressly *permit* representative payees to use benefits to pay for a beneficiary's current care. Pet'r Br. at 21-22.

As a duly-appointed representative payee for foster children in its care, the Department is authorized by social security regulations to use benefits exactly as it does—to pay for such items as food, clothing, and shelter for the beneficiary. The regulations clearly specify that payments used for such purposes constitute "current maintenance", and that "current maintenance" payments are deemed to be for the "use and benefit" of the beneficiary. 20 C.F.R. § 404.2040(a)(1). Moreover, use of benefits for current maintenance is by regulatory definition in the "best interests" of the beneficiary: "Benefits certified to a representative payee are considered to be used in the beneficiary's best interest if they are used for a beneficiary's current maintenance." 47 Fed. Reg. 30,468, 30,470 (1982).

But respondents and the court below take a different view of "best interests" than the SSA. According to respondents and the Washington Supreme Court, payments made for current maintenance can never be in the "best interests" of the beneficiary when the same maintenance would otherwise be provided to the beneficiary by the state at no charge. Resp't Br. at 22, 30; App. Pet. at 28. That position is untenable, for two reasons.

First, as discussed above, it is inconsistent with case law holding that a state may offset the amount of public assistance it provides by the amount of a beneficiary's social security benefits, a point respondents do not and cannot dispute. *See* B.2 *supra* pp. 5-6; Resp't Br. at 37 n.28. The practical effect on the beneficiary of such an "offset"

is precisely the effect complained of here: Instead of receiving federal benefits in addition to state support, the beneficiary's social security benefits reduce some portion of what otherwise would be state assistance. If the "offset" method of accounting for federal benefits is fully permissible, then it would elevate form over substance to say that the reimbursement method employed by DSHS, identical in practical consequence, somehow violates the "best interests" standard.

Second, respondents and the Washington Supreme Court are not entitled to substitute their view of what constitutes the "best interests" of beneficiaries for that of the SSA. Pet'r Br. at 31-34. The SSA's position, set out in the regulatory material described above, is that payments for current maintenance are necessarily in the "best interests" of the beneficiary. And the SSA Rulings discussed in petitioners' opening brief make clear that this standard governs even when the costs of current maintenance would otherwise be absorbed by the state, at no charge to the beneficiary. Pet'r Br. at 32-33. That is the general principle for which the Rulings are cited, and respondents' purported distinctions do nothing to undermine that principle. Nor is it correct, as respondents argue, that the rulings are not entitled to deference because they are "merely ruling letters", not subject to notice and comment. Resp't Br. at 46. The Court settled this matter in *Barnhart v. Walton*, 122 S. Ct. 1265, 1271 (2002), deferring to a Social Security Ruling and explaining that the "fact that the Agency previously reached its interpretation through means less formal than 'notice and comment' rulemaking does not auto-

matically deprive that interpretation of the judicial deference otherwise its due". (Citation omitted.)

3. Both respondents and the Washington Supreme Court also place entirely undue emphasis on the fact that DSHS employs reimbursement accounting, using social security benefits to pay for the cost of maintenance two or three months after foster care services are provided. Resp't Br. at 23; App. Pet. at 19, 28. As the trial court found, the Department does have a reimbursement process, "but only in the accounting sense". App. Pet. at 61. And nothing in § 405(j) even suggests that any particular accounting method is required or disfavored. As both petitioners and the United States explain, the fact that DSHS uses a reimbursement method of accounting is immaterial to the interests of the beneficiary—though it does have significant advantages for the administration of the social security program. Pet'r Br. at 13-14; Br. United States Amicus Curiae at 27-29.

Moreover, if reimbursement accounting violates § 405(j), the impact would extend far beyond the Department or other state representative payees. Under respondents' theory, a parent could not buy an item for a beneficiary child using the family checking account and later "reimburse" the family account using social security benefits. This would be a special problem for representative payees receiving benefits under Title II, because these benefits are disbursed with a one-month time lag (i.e., January's benefits are issued in early February). *See* POMS GN 02401.001; Br. United States Amicus Curiae at 27. Under respondents' theory, a representative payee could not buy clothing for a beneficiary in January and reimburse himself for the cost of the

clothing when the January benefits arrived in February. There is no reason to think Congress would have intended this counter-intuitive result, and no basis for reading it into § 405(j).

4. Respondents also are mistaken when they argue that state law prohibits the Department from exercising the discretion required of a representative payee by § 405(j). Resp't Br. at 26-27. This argument is based on the same misinterpretation of Washington law as respondents' claim that DSHS is required to "seize" benefits for foster care reimbursement and cannot use benefits for other purposes. *See* B.1 *supra* pp. 2-5. As we previously explained, however, Wash. Rev. Code § 74.13.060(1) and (2) grants the Secretary the discretion to use benefits for personal needs and to reimburse for the cost of foster care, and the record establishes that the Department exercises this discretion.

Respondents' main complaint seems to be that the Department "failed to present any evidence" that it makes a systematic attempt to determine whether beneficiaries need special items such as computers and toys. Resp't Br. at 26.[5] In fact, the Department systematically determines a foster child's more basic special needs. The Department prepares an Individual Service and Safety Plan for each child, addressing the child's needs, where the child should live, and the child's permanent placement. JA at 194, ¶ 9. The foster care a child receives reflects the implementation of that plan. Foster care includes a

[5] The burden is on respondents to establish that the Department does not properly exercise its responsibilities as representative payee. The findings relied on by respondents (App. Pet. at 58-59, ¶ 38-41) only establish a lack of evidence in the record. In other words, respondents failed to carry their burden of proof.

wide range of services. Pet'r Br. at 9. For example, the rate for basic foster care ranges from $366 to $515 per month. But ninety-eight percent of foster children eligible for SSI benefits under Title XVI, 42 U.S.C. §§ 1381 *et seq.*, receive services above and beyond basic foster care. Washington spends an average of $1,776 per month on foster children receiving SSI benefits.[6] Aff. Rosalyn Oreskovich ¶ 3.2 (attached to the Department's Application For Stay). The SSI benefit is only $520 per month. App. Pet. at 50, ¶ 10. So the Department provides SSI beneficiaries with services above and beyond what their social security benefits would pay for.

Moreover, the Department does not use a cookie cutter approach that treats each child the same. The services the Department provides depends on the needs of each child, and these needs will change over time. For example, the cost of care for Nicole B., who received SSI benefits (JA at 215), was $1,806 in March 1997. JA at 392. A year later, her needs had changed and the cost of her care in March 1998 was $1,139. JA at 394. Likewise, the cost of care for Jasmine C., who also received SSI benefits (JA at 228), changed from $874 in March 1997 (JA at 395), to $648 a year later. JA at 397. The Department tailors foster care to the needs of the individual child.

[6] Respondents claim that the Department only provides seventy percent of the standard income for an SSI child. This is based on the assumption that the only payment made by the Department is a basic foster care payment, for example, $426 per month for an eight year old child. Resp't Br. at 4 n.2. In fact, the Department spends an average of $1,776 on foster children receiving SSI benefits.

The main purpose of social security benefits is not to buy the beneficiary computers and toys. It is to address the basic needs of the child. The Department fulfills this purpose when it acts as representative payee exactly as required by § 405(j).

5. Finally, respondents argue that the Department does not, in fact, use the benefits in question to pay for "current maintenance", and instead makes other allegedly inappropriate uses of the benefits. Resp't Br. at 23-26. These claims of accounting irregularities are, of course, irrelevant to the legal question presented in this case. They are also precisely the kind of complaint that is properly handled by the SSA, which, as explained in our opening brief, exercises comprehensive supervision over representative payees. Pet'r Br. at 3-5, 26-27. In any event, however, respondents' allegations are incorrect.

(a) It is not the case that the Department uses social security benefits to pay programmatic expenses. Resp't Br. at 7-8, 23. The trial court found that the Department uses the benefits in question to pay for current care and special needs (App. Pet. at 55-58, ¶ 25-37), and there is no finding that the benefits are used to pay programmatic expenses. Nor, as respondents mistakenly believe, do the service codes on the "T" Payment Code List[7] reflect payments for programmatic costs. Resp't Br. at 7-8. The only costs that the Department will pay for with social security benefits are service codes listed on the T List. None of the listed codes are for programatic

[7] The T list is in the Joint Appendix at pages 404-06. However, it was misprinted, so an accurate copy is attached to this brief as Appendix A.

expenses of the Department. For example, service code #3210 is the code for basic foster care. Though the code description refers generally to "case management services", as respondents emphasize (Resp't Br. at 7), the only payments *actually authorized* under the code are for room, board, clothing, and personal expenses—that is, for current maintenance. One example makes the point: Basic foster care for an eight year old under code #3210 is $418.44. This includes $328.02 for room and board, $36.40 for clothing, and $54.02 for personal allowance—which leaves nothing for programmatic costs. JA at 422-23. All of the $418.44 payment is sent to the foster parent, and none goes to cover the Department's administrative expenses.

In fact, service codes that involve programmatic costs are not on the T List at all, and social security benefits may not be used to pay these costs. Examples of these nonreimbursable codes are #3105 (payments to Family Residential Crisis Center to assure the availability of a bed on a twenty-four-hour basis) (JA at 410); #3113 (payments for unfilled slots in a regional crisis residential center) (JA at 412); #3215 (payments authorized when the Department borrows a foster home/bed from a private agency) (JA at 433); and #3241 (payments to receiving home foster parents to assure the availability of a bed on a 24-hour crisis for a child who requires temporary care on short notice) (JA at 462).

All of the social security benefits are used for the needs of the child. The Department does not even take the fee for administrative expenses authorized under social security law. *See* Pet'r Br. at 15.

(b) Respondents also allege that the Department improperly "sweeps" beneficiaries'

accounts. Resp't Br. at 7. Despite the negative connotation of the term, the procedure in question involves nothing more than using a lump-sum payment to pay for past care. Sometimes there is a delay in granting benefits—for example, if benefits are initially denied and the Department successfully appeals, then the SSA grants retroactive benefits. The Department uses those benefits to pay for past care, but only for the months for which the benefits were granted. This procedure is described in detail in petitioner's opening brief. Pet'r Br. at 13-14 & n.11. Despite respondents' suggestions of wrongdoing, the trial court did not find that this perfectly straightforward system violates any social security law or regulation. App. Pet. at 63, ¶ 58. In fact, social security regulations recognize that a retroactive payment of benefits may be used to pay care provided before the benefits are received. 20 C.F.R. § 404.2040(d) (retroactive "benefits due for July 1980 through January 1981" received in February 1981, properly used by representative payee for "maintenance expenses the beneficiary incurred during the period from June 1980 through November 1980").

(c) The Department does not engage in "double dipping" by using social security benefits to reimburse the state for foster care costs already paid by other federal funds. Resp't Br. at 24-25. Though the foster care program does receive other federal funds, social security benefits and those other funds are never used to pay the same expense. *See* Dep. Tamara Erickson at 22 ("No federal agency allows you to receive more than one federal funding source for the same expenditure."). But respondents claim the Department's accounting system results in

double dipping. Finding of fact 88, on which respondents rely entirely for this claim, does not support it. Resp't Br. at 25. That finding states only that the "record does not establish this point or rule it out". App. Pet. at 70-71, ¶ 88. It is not surprising that the record does not address this matter since the legal issue before the court was whether the Department, acting as representative payee, could use social security benefits to pay for the current maintenance of the beneficiary.

(d) The Department has acknowledged that it is possible that child support and social security benefits could inadvertently be used to pay the same foster care expenses. JA at 210, ¶ 7. Respondents, however, greatly exaggerate the impact of this problem when they claim that "the State *likely* recovers its costs twice when it uses Social Security benefits to repay foster care expenditures already paid from parental support". Resp't Br. at 25 (emphasis added). The trial court found only that the "state *may* experience a double payment". App. Pet. at 69, ¶ 82. The trial court's finding that a double payment is only a possibility is fully consistent with the record in this case. Nineteen of the children in the fifty random samples in the record of this case received child support. But there is no proof that there was any double payment of foster care expenses. JA at 133, ¶ 10; 210-11, ¶ 8. A double payment is very unlikely because the cost of foster care exceeds the total amount of social security benefits and child support, so that even if both are applied to the same expenses, the state must still make up the difference. JA at 210-11, ¶ 8. In any event, the Department is working to protect

against even the remote possibility of a problem. JA at 211, ¶ 9.

In summary, the Department does not violate § 405(j). Consistent with Washington law, the Department uses the benefits for the beneficiary's current care and special needs. And although respondents claim the Department uses the benefits improperly, respondents failed to prove those claims before the trial court. In any event, these alleged irregularities are irrelevant to the question presented in this case and are properly the responsibility of the SSA, which supervises representative payees.

D. Conclusion

For the forgoing reasons, and those stated in petitioners' opening brief, the judgment of the Washington Supreme Court should be reversed.

Respectfully submitted,

CHRISTINE O. GREGOIRE
Attorney General

Walter Dellinger
Pamela Harris
O'Melveny & Myers

555 13th Street NW
Washington, D.C. 20004
202-383-5300

William Berggren Collins
Sr. Assistant Attorney General
Counsel of Record

1125 Washington Street SE
Olympia, WA 98504-0100
360-753-6245

Counsel For Petitioners

November 2002

Appendix A

"T-List" of Reimbursable Expenses

TRSTFUND MAINTIAN TRUST FUND TABLE TRSTFUND TRSTLST

Sel	Srvc	Sel	Srvc	Sel	Srvc	Sel	Srvc
_	_2801	_	_2804	_	_2805	_	_2807
_	_2808	_	_2810	_	_2826	_	_2827
_	_2828	_	_2829	_	_2830	_	_2831
_	_2832	_	_2833	_	_2834	_	_2835
_	_2836	_	_2837	_	_2838	_	_2873
_	_2874	_	_3101	_	_3104	_	_3114
_	_3115	_	_3201	_	_3202	_	_3203
_	_3210	_	_3211	_	_3212	_	_3216
_	_3217	_	_3218	_	_3219	_	_3223
_	_3224	_	_3225	_	_3232	_	_3233
_	_3234	_	_3235	_	_3301	_	_3302
_	_3406	_	_3410	_	_3412	_	_3415
_	_3418	_	_3423	_	_3425	_	_3433
_	_3435	_	_3441	_	_3442	_	_3443
_	_3444	_	_3447	_	_3448	_	_3450

Options: C = Create R = Review U = Update D = Delete

TRSTFUND MAINTIAN TRUST FUND TABLE TRSTFUND TRSTLST

Sel	Srvc	Sel	Srvc	Sel	Srvc	Sel	Srvc
_	_3452	_	_3453	_	_3454	_	_3455
_	_3456	_	_3457	_	_3458	_	_3459
_	_3460	_	_3461	_	_3462	_	_3470
_	_3476	_	_3477	_	_3494	_	_3495
_	_3901	_	_3902	_	_4940	_	92801
_	92804	_	92805	_	92807	_	92808
_	92810	_	92826	_	92827	_	92828
_	92829	_	92830	_	92831	_	92832
_	92833	_	92834	_	92835	_	92836
_	92837	_	92838	_	92873	_	92874
_	93101	_	93104	_	93114	_	93115
_	93201	_	93202	_	93203	_	93210
_	93211	_	93212	_	93216	_	93218
_	93219	_	93223	_	93224	_	93225
_	93232	_	93233	_	93234	_	93235

Options: C = Create R = Review U = Update D = Delete

TRSTFUND MAINTIAN TRUST FUND TABLE TRSTFUND TRSTLST

Sel	Srvc	Sel	Srvc	Sel	Srvc	Sel	Srvc
	93301		93406		93410		93412
_	93415	_	93418	_	93423	_	93425
_	93433	_	93435	_	93441	_	93442
_	93443	_	93444	_	93447	_	93448
_	93450	_	93452	_	93453	_	93454
_	93455	_	93456	_	93457	_	93458
_	93459	_	93460	_	93461	_	93462
_	93476	_	93477	_	93494	_	93495
_	93901	_	93902	_	94940	_	
_	_____	_	_____	_	_____	_	_____
_	_____	_	_____	_	_____	_	_____
_	_____	_	_____	_	_____	_	_____
_	_____	_	_____	_	_____	_	_____
_	_____	_	_____	_	_____	_	_____
_	_____	_	_____	_	_____	_	_____
_	_____	_	_____	_	_____	_	_____

Options: C = Create R = Review U = Update D = Delete

330

(8)

No. 01-1420

FILED
AUG 2 2002
OFFICE OF THE CLERK

In The
Supreme Court of the United States

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, ET AL.,

Petitioners,

v.

GUARDIANSHIP ESTATE OF DANNY KEFFELER BY WANDA PIERCE, GUARDIAN, AND OTHER PERSONS SIMILARLY SITUATED,

Respondents.

On Writ Of Certiorari To The Washington Supreme Court

BRIEF OF *AMICI CURIAE*, COUNTIES OF THE STATE OF CALIFORNIA: LOS ANGELES, SAN BERNARDINO, SANTA CLARA, CONTRA COSTA, ALAMEDA, MODOC, NAPA, NEVADA, RIVERSIDE, SAN DIEGO, TULARE, AND THE CALIFORNIA STATE ASSOCIATION OF COUNTIES, IN SUPPORT OF PETITIONERS

LLOYD W. PELLMAN
County Counsel
ADA GARDINER
Assistant County Counsel
Counsel of Record
CATHERINE J. PRATT
Deputy County Counsel
201 Centre Plaza Drive,
Suite 1
Monterey Park, CA 91754
(323) 526-6106

ALAN K. MARKS
County Counsel
JULIE J. SURBER
Deputy County Counsel
385 North Arrowhead
Avenue
Fourth Floor
San Bernardino, CA 92415

Counsel for Amici Curiae

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

RUTH SORENSEN
Executive Director and
Litigation Coordinator
COUNTY COUNSELS'
ASSOCIATION OF CALIFORNIA
1100 K Street, Suite 101
Sacramento, California 95814

CHARLES J. MCKEE
Nevada County Counsel
JULIE A. MCMANUS
Deputy County Counsel
950 Maidu Avenue
Nevada City, California
95959-8617

RICHARD E. WINNIE
Alameda County Counsel
1221 Oak Street, Suite 450
Oakland, California 94612

WILLIAM C. KATZENSTEIN
Riverside County Counsel
3535 Tenth Street
Riverside, California 92501

SILVANO B. MARCHESI
Contra Costa County
Counsel
BERNARD KNAPP
Deputy County Counsel
Contra Costa County
651 Pine Street, 9th Floor
Martinez, California 94553

JOHN J. SANSONE
San Diego County
Counsel
STEPHEN R. MAGRUDER
Senior Deputy County
Counsel
1600 Pacific Highway,
Room 355
San Diego, CA 92101-2469

VICKIE LYNN COCHRAN
Modoc County Counsel
203 South Court Street,
Room 202
Alturas, California 96101

ANN MILLER RAVEL
Santa Clara County
Counsel
MELISSA KINIYALOCTS
Deputy County Counsel
County Government
Center, East Wing
70 West Hedding Street,
9th Floor
San Jose, California 95110

ROBERT WESTMEYER
Napa County Counsel
1195 Third Street,
Room 301
Napa, California 94559

KATHLEEN BALES-LANGE
Tulare County Counsel
2900 West Burrell Avenue
Visalia, California 93291

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
OPINION BELOW	1
INTEREST OF THE *AMICI CURIAE*	2
SUMMARY OF ARGUMENT	4
ARGUMENT	4
I. THE SOCIAL SECURITY ACT IS THE LEGISLATIVE SOURCE FOR MOST CHILD WELFARE FUNDS	4
A. LOCAL SOCIAL SERVICE AGENCIES ARE AUTHORIZED REPRESENTATIVE PAYEES FOR SOCIAL SECURITY BENEFITS	5
B. REPRESENTATIVE PAYEES MUST USE BENEFITS FOR THE CARE OF THE CHILD	6
II. WHEN THE ANTI-ALIENATION PROVISION OF THE ACT IS READ IN CONJUNCTION WITH THE REPRESENTATIVE PAYEE PROVISIONS, IT IS CLEAR THAT THE COUNTIES CAN USE BENEFITS TOWARD THE COST OF PROVIDING FOSTER CARE	8
III. COURTS HAVE CONCLUDED THAT THE USE OF SOCIAL SECURITY BENEFITS BY REPRESENTATIVE PAYEES IS NOT "OTHER LEGAL PROCESS" AND THEREFORE DOES NOT VIOLATE SECTION 407(a)	10

TABLE OF CONTENTS – Continued

		Page
IV.	CALIFORNIA COUNTIES, WHEN SERVING AS REPRESENTATIVE PAYEES, COMPLY WITH STATE AND FEDERAL LAWS THAT REQUIRE COUNTIES TO OBTAIN ALL AVAILABLE SOURCES OF INCOME FOR CHILDREN IN FOSTER CARE	12
V.	THE *KEFFELER* RULING CREATES A DISPARITY BETWEEN CHILDREN ELIGIBLE FOR FEDERAL AFDC-FC UNDER TITLE IV-E AND THOSE ELIGIBLE FOR NON-FEDERAL AFDC-FC	14
VI.	CHILDREN ARE AT RISK OF LOSING CRITICAL STATE AND FEDERAL BENEFITS IF THE SOCIAL SECURITY BENEFITS ARE ALLOWED TO ACCRUE	16
CONCLUSION		18
APPENDIX		App. 1

TABLE OF AUTHORITIES

Page

FEDERAL CASES

Bennett v. Arkansas, 485 U.S. 395 (1988) 10

Brinkman v. Rahm, 878 F.2d 263 (9th Cir. 1989) 10

Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984) 8, 9

Crawford v. Gould, 56 F.3d 1162 (9th Cir. 1995) 10

King v. Schafer, 940 F.2d 1182 (8th Cir. 1991) 11

Mason v. Sybinski, 280 F.3d 788 (7th Cir. 2002) 11

Monell v. Dept. of Social Services, 436 U.S. 658 (1978) 3

Watkins v. City of Oakland, 145 F.3d 1087 (9th Cir. 1998) 3

STATE CASES

C.G.A. v. State of Alaska, 824 P.2d 1364 (1992) 10, 11

County of San Mateo v. Dell, 46 Cal.3d 1236 (1988) 13

Guardianship Estate of Danny Keffeler v. Washington State Department of Social and Health Services et al., 145 Wash.2d 1 (2001) ..... *passim*

In re Danielle W., 207 Cal.App.3d 1227 (1989) 12

FEDERAL STATUTES

42 U.S.C. § 401 5

42 U.S.C. § 405(j) 1, 2, 6

42 U.S.C. § 405(j)(2)(C)(i)(III) 8

42 U.S.C. § 405(j)(3)(A)-(B) 7

42 U.S.C. § 407(a) 1, 4, 8, 10, 11

TABLE OF AUTHORITIES – Continued

Page

42 U.S.C. § 608(a)(3) 13
42 U.S.C. § 654 13
42 U.S.C. § 671(a)(17) 13
42 U.S.C. § 672 5
42 U.S.C. § 672(a) 5
42 U.S.C. § 1381 5
42 U.S.C. § 1382(a)(1)(B)(ii) 7, 16
42 U.S.C. § 1382(a)(3)(B) 7, 16
42 U.S.C. § 1383(a)(2)(B)(iii)(III) 8
42 U.S.C. § 1383(a)(2)(C)(i) 7
42 U.S.C. § 1383(d)(1) 8
42 U.S.C. § 1383(p) 17
42 U.S.C. § 1983 3

CALIFORNIA STATUTES

Welf. & Inst. Code, § 16000 12
Welf. & Inst. Code, § 11400(f) 6
Welf. & Inst. Code, § 11460(b) 6
Welf. & Inst. Code, § 11477 13

FEDERAL REGULATIONS

20 Code of Federal Regulations ("C.F.R.") § 404.2001 6
20 C.F.R. § 404.2010(b) 6
20 C.F.R. § 404.2021(b) 6
20 C.F.R. § 404.2021(b)(7) 6, 9

TABLE OF AUTHORITIES – Continued

Page

20 C.F.R. § 404.2035(a) 6
20 C.F.R. § 404.2040(a) 6
20 C.F.R. § 404.2040(b) 6
20 C.F.R. § 404.2045(a) 7
20 C.F.R. § 416.110 17
20 C.F.R. § 416.601 6
20 C.F.R. § 416.610(b) 6
20 C.F.R. § 416.621(b) 6
20 C.F.R. § 416.621(b)(7) 6, 9
20 C.F.R. § 416.635(a) 6
20 C.F.R. § 416.635(b) 16
20 C.F.R. § 416.640 17
20 C.F.R. § 416.640(a) 6
20 C.F.R. § 416.640(b) 6
20 C.F.R. § 416.645(a) 7
20 C.F.R. § 416.1205 ..... 7, 16
20 C.F.R. § 416.1321(b) 17
20 C.F.R. § 416.1324 16
20 C.F.R. § 416.1335 16
45 C.F.R. § 233.20(a)(3)(ix) 13

TABLE OF AUTHORITIES – Continued

Page

CALIFORNIA REGULATIONS

22 California Code of Regulation ("C.C.R.") § 50201 17

22 C.C.R. § 50203.....18

22 C.C.R. § 50205.....18

RULES

Rules of the Supreme Court of the United States, Rule 37.3 2

OPINION BELOW

In *Guardianship Estate of Danny Keffeler v. Washington State Department of Social and Health Services, et al.*, 145 Wash. 2d 1 (2001), the Washington Supreme Court ignored the Social Security Administration's ("Administration") interpretation of section 405(j) of the Social Security Act ("Act") and the regulations promulgated thereunder. The *Keffeler* decision effectively invalidated section 405(j) and the regulations by holding that the state child welfare agency could not apply social security benefits to the costs of current care of children in foster care. This broad scope has nationwide significance. If allowed to stand, this ruling endangers the statutory provisions for the care of dependent children and the operation of state and local child welfare agencies throughout the country.

Specifically, the *Keffeler* court ruled that the State of Washington violated the Act's "anti-alienation" provision which is designed to protect benefits of needy persons from being used by creditors to satisfy past debts. Section 407(a) provides that social security benefits shall not be subject to "execution, levy, attachment, garnishment, *or other legal process*, or to the operation of any bankruptcy or insolvency law." [Emphasis added.] The *Keffeler* court erroneously held that the term "other legal process" included the statutory functions of the *amici curiae*: i.e., applying for status as "representative payee" for foster children and then receiving and applying social security benefits to the cost of county-administered foster care provided for them. As will be shown in detail below, the reasoning of the *Keffeler* decision is flawed in that it interprets section 407(a) without giving proper deference

to section 405(j) and the intent expressed in the regulations promulgated by the Administration.

INTEREST OF THE *AMICI CURIAE*

The *amici curiae* are eleven counties of the State of California, and the California State Association of Counties ("CSAC"), a non-profit organization whose membership includes all 58 counties in California.[1] All together, these counties provide foster care services for more than 60,000 abused and neglected children.

As a result of the *Keffeler* ruling, current and former foster children in at least three of the *amici* counties filed similar class actions against the local child welfare agencies and others are threatened, in California and other states. In February 2002, a coalition of four law firms filed separate actions against the counties of Los Angeles, San Bernardino, and Santa Clara, California, in state court.

[1] CSAC sponsors a Litigation Coordination Program which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of County Counsels throughout California. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all 58 counties of California.

CSAC is not a political subdivision of California but has obtained consent of all parties to join in this *amicus* brief, pursuant to Rules of the Supreme Court of the United States, Rule 37.3.

Counsel for a party did not author this brief in whole or in part. No person or entity, other that the *amici curiae* and their counsel, have made a monetary contribution to the preparation and submission of this brief.

Each county removed the actions to federal district court based upon the federal questions alleged. These class actions seek reimbursement of all social security benefits paid to the counties as representative payees for foster children since 1976 (in the actions against San Bernardino and Santa Clara Counties) or 1978 (in the action against Los Angeles County). A fourth California county has been defending a similar class action suit since 1995.[2] Thus, at least four class actions are currently pending in the federal district courts of California which allege that the *amici* counties' use of social security benefits toward the current costs of foster care is illegal and seek repayment of millions of dollars of public funds expended for care of dependent children.

California, unlike the state of Washington, delegates the administration of social services, including foster care, to its counties. While the counties of California follow the same guidelines as other state social services agencies, their status as counties exposes them to greater potential liability. In contrast to states which are not "persons" under 42 U.S.C. § 1983, local governments are subject to suit if they allegedly deprive persons of rights conferred by federal statutes. *Monell v. Dept. of Social Services* 436 U.S. 658, 690-691 (1978). In fact, three of the pending actions against California counties include claims under Section 1983. Further, individual county employees who can be held responsible for a specific deprivation may be sued personally and held liable for punitive damages. *Watkins v. City of Oakland* 145 F.3d 1087, 1093 (9th Cir. 1998).

[2] This action is filed against Contra Costa County.

Thus, each of the 58 counties of California has a strong interest in this Court's interpretation of the applicable provisions of the Social Security Act which authorizes them to act as representative payees for foster children. The *amici* counties urge the Court to defer to the Administration's interpretation of the Act and to continue to allow them to serve as representative payees for the benefit of eligible foster children and to use the children's social security benefits for their current care.

SUMMARY OF ARGUMENT

Section 405(j) and the regulations allow local child welfare agencies to act as representative payees for Social Security benefits of dependent foster children and to use those benefits for the costs of their current care. *Amici curiae* request that the Court reverse the *Keffeler* decision because local child welfare agencies do not violate the anti-alienation provision of section 407(a).

ARGUMENT

I. THE SOCIAL SECURITY ACT IS THE LEGISLATIVE SOURCE FOR MOST CHILD WELFARE FUNDS.

Without absolving parents of their legal responsibility for the cost of care and maintenance of their children, the federal government supports abused and neglected children by providing shelter, care and services to the children and their parents or caretakers, if appropriate. Such guidelines are set forth in Title IV of the Act which allocates

federal child welfare funding to qualifying states. 42 U.S.C. § 672 *et seq*.

The costs of foster care are shared by the federal and local governments. The portion of the costs borne by each entity varies depending upon whether the child in foster care was eligible for federal Aid to Families with Dependent Children – Foster Care ("AFDC-FC") at the time the child was removed from the parents' home. 42 U.S.C. § 672(a). Generally, the federal government pays at least 50 percent of these costs. Since the majority of foster care funds are federal, federal regulations govern the way states and counties expend these funds and furnish foster care services.

A. LOCAL SOCIAL SERVICE AGENCIES ARE AUTHORIZED REPRESENTATIVE PAYEES FOR SOCIAL SECURITY BENEFITS.

Some children in foster care are also eligible for social security benefits, either because a parent is disabled or has died[3] or because the child is disabled and lacks significant resources for the child's special needs.[4] The Act and regulations thereunder specifically authorize the payment of benefits for children under the age of 18 to a representative

[3] These benefits are paid under Title II of the Social Security Act, the Old-Age and Survivor's and Disability Insurance Benefits program and will be referred to herein as "survivor's benefits." 42 U.S.C. § 401 *et seq*.

[4] These benefits are paid under Title XVI of the Social Security Act, the Supplemental Security Income ("SSI") program. 42 U.S.C. § 1381 *et seq*.

payee. 42 U.S.C. § 405(j); 20 C.F.R. §§ 404.2010(b), 416.610(b). The Administration approves and supervises all representative payees to ensure that they are following applicable regulations and acting in the best interest of the beneficiaries. 20 C.F.R. §§ 404.2001, 416.601. For dependent children, a state or county child welfare agency may be appointed as representative payee. 20 C.F.R. §§ 404.2021(b)(7), 416.621(b)(7). Generally, such an agency will be appointed as representative payee only if no other suitable individual is identified to serve in that capacity. 20 C.F.R. §§ 404.2021(b), 416.621(b).

B. REPRESENTATIVE PAYEES MUST USE BENEFITS FOR THE CARE OF THE CHILD.

A representative payee must use the payments for the "use and benefit of the beneficiary." 20 C.F.R. §§ 404.2035(a), 416.635(a). Regulations authorize a representative payee to pay for the beneficiary's "current maintenance," including the costs of "food, shelter, clothing, medical care and personal comfort items." 20 C.F.R. §§ 404.2040(a), 416.640(a). The cost of institutionalized care, such as foster care, is an authorized expense.[5] 20 C.F.R. §§ 404.2040(b), 416.640(b). If the monthly social security benefits exceed the amount needed for current maintenance, the regulations

[5] Under California law, foster care is designed to provide 24-hour out-of-home care for dependent children, including food, clothing, shelter, school supplies and personal incidentals. Cal. Welf. & Inst. Code, §§ 11400(f), 11460(b). Thus, the care and services provided in foster care are the same as authorized under the representative payee regulations.

direct the representative payee to conserve or invest these funds and hold them in trust for the child. 20 C.F.R. §§ 404.2045(a), 416.645(a). However, there is a cap of $2,000 on funds that may be held in trust if they are not used for the current maintenance of the beneficiary. 42 U.S.C. §§ 1382(a)(1)(B)(ii), 1382(a)(3)(B); 20 C.F.R. § 416.1205.

The Administration monitors representative payees to ensure compliance with statutory and regulatory obligations, including periodic review of state agencies that serve as representative payees. 42 U.S.C. §§ 405(j)(3)(A)-(B), 1383(a)(2)(C)(i). For example, the Administration's Office of Inspector General has conducted at least 19 audits of local social service agencies' actions as representative payee since 1997. Accordingly, the *amici curiae* have complied with the Act and their programs have been approved of by the Administration.

The *Keffeler* court did not address the fact that the Administration approves of the use of benefits for the costs of current foster care by child welfare agencies serving as representative payees. The Washington Department of Social and Health Services ("DSHS") acted with the approval of the Administration when it was appointed by the Commissioner as representative payee. *Keffeler*, 145 Wn.2d at 10-11. Nevertheless, the *Keffeler* court concluded that the child welfare agency did not act in the best interests of the beneficiaries when it used benefits to pay for the costs of food, clothing, shelter, medical care, and personal items of children in foster care. *Id.* p. at 26. This conclusion is contrary to the Administration's determination that use of benefits for current maintenance in foster care is an authorized expense.

II. WHEN THE ANTI-ALIENATION PROVISION OF THE ACT IS READ IN CONJUNCTION WITH THE REPRESENTATIVE PAYEE PROVISIONS, IT IS CLEAR THAT THE COUNTIES CAN USE BENEFITS TOWARD THE COST OF PROVIDING FOSTER CARE.

Under the Act, a beneficiary's creditors are prohibited from being appointed as representative payee. 42 U.S.C. §§ 405(j)(2)(C)(i)(III), 1383(a)(2)(B)(iii)(III). The Act's anti-alienation provision prohibits creditors from attaching or encumbering social security benefits. It states:

> The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

42 U.S.C. § 407(a); See also 42 U.S.C. § 1383(d)(1) [incorporating Section 407 for purposes of Title XVI's SSI program.]. Read together these two sections of the Act aim to ensure that social security payments are used for the current care of the beneficiaries and not to satisfy past debts. Since the Act expressly allows child welfare agencies to be representative payees and as such to apply social security payments to the child's current maintenance, the Administration clearly does not construe these agencies as creditors within the meaning of these provisions.

In reviewing an agency's construction of a statute that it administers, a court must consider the intent of Congress. *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.* 467 U.S. 837, 842-43 (1984). If the intent of

Congress is clear from the statute, that is the end of the inquiry. *Ibid.* If, however, the court determines that Congress has not directly addressed in the statute the precise question at issue, the court cannot simply impose its own construction on the statute. *Ibid.* In that instance, the court must evaluate whether the agency's interpretation of the statute is based on a permissible construction of the statute. *Ibid.* Furthermore, "[i]f Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation." *Chevron*, 467 U.S. at 843-44. An agency's interpretation of the statute should be respected unless it is "arbitrary, capricious, or manifestly contrary to the statute." *Id.* at p. 844.

Applying these principles to the instant case, the anti-alienation provision expresses a general principle that benefits for current maintenance of needy people should not be used to pay for past debts. Congress thereby did not address the situation of representative payees of dependent children, effectively delegating to the Administration the responsibility of constructing and implementing the representative payee guidelines. In its regulations, the Administration expressly allows a county child welfare agency to be appointed representative payee and to use the benefits for the current maintenance of the children. 20 C.F.R. §§ 404.2021(b)(7), 416.621(b)(7). Therefore the Administration clearly does not consider local child welfare agencies to be creditors because the benefits are not used to satisfy past debts. Rather, they are used for current maintenance. Thus, the *amici* counties do not stand in a creditor-debtor relationship with foster children when the counties use the benefits for providing for the current needs of foster children.

III. COURTS HAVE CONCLUDED THAT THE USE OF SOCIAL SECURITY BENEFITS BY REPRESENTATIVE PAYEES IS NOT "OTHER LEGAL PROCESS" AND THEREFORE DOES NOT VIOLATE SECTION 407(a).

The *Keffeler* court relied on a series of cases which prohibit social service agencies from taking social security payments from beneficiaries and using them to finance institutionalized care for the beneficiaries. See, for example, *Bennett v. Arkansas* 485 U.S. 395 (1988) [Arkansas statute permitting seizure of prisoners' benefits and use for prisoners' care and maintenance violated Section 407(a).]; *Crawford v. Gould* 56 F.3d 1162 (9th Cir. 1995) [Automatic withdrawal of social security benefits from the accounts of psychiatric patients was considered "other legal process" and, therefore, violated section 407(a).]; *Brinkman v. Rahm* 878 F.2d 263 (9th Cir. 1989) [Washington procedure withdrawing funds from psychiatric patients' account to reimburse the state for the costs of care of the patients violated 407(a).].

Importantly, in each of these cases, the agency that sought the payments **did not** act as representative payee of the benefits and was not authorized to act as such. The Alaska Supreme Court noted this critical distinction in *C.G.A. v. State of Alaska* 824 P.2d 1364 (1992). In approving the state's use of a minor's social security benefits to pay for the child's care in juvenile hall, the court noted:

> Social security regulations allow a state to become a representative payee. [citations omitted.] The regulations also allow representative payees to use some or all of the benefits to pay for appropriate institutional care. [footnote omitted.]

> The regulations do not require that the representative payee consult with the beneficiary before spending the funds. *Thus, so long as the state agency performs its duties as representative payee and spends the funds only on authorized expenses, it would not violate the prohibition on attachment found in section 407(a)'s ban on attachment.*

Id. at p. 1369, emphasis added.

In other cases considering a representative payee's use of payments, two circuit courts determined that use of funds for the care of the beneficiary was appropriate and did not violate Section 407(a). In *Mason v. Sybinski* 280 F.3d 788 (7th Cir. 2002), an Indiana social service agency, as representative payee, used benefits for the costs of hospitalization of mentally impaired adults. The Seventh Circuit concluded that the representative payee procedures were not "other legal process" under Section 407(a). "The Social Security Act and regulations . . . permit – in fact, encourage – state institutions to act as representative payees and, more pertinently, when acting as payees, to apply recipient's benefits to the cost of their care and maintenance at a state institution where they reside." *Id.* at p. 793. Similarly, in *King v. Schafer* 940 F.2d 1182 (8th Cir. 1991), a Missouri social service agency acted as representative payee for psychiatric patients. The Eighth Circuit determined that Missouri's use of social security benefits for the cost of psychiatric hospitalization is not "other legal process" and does not violate the anti-alienation provision of the Act. "Section 407(a) was not intended to outlaw a procedure expressly authorized by the Social Security Administration's own regulations." *Id.* at p. 1185.

Based upon the cases decided throughout the country to date, an important distinction emerges. In situations in which the social service agency acts as representative payee and follows the stringent obligations set forth by the Administration to maintain that status, the use of social security benefits to pay for the recipient's care is appropriate and does not violate the anti-alienation clause of the Act. All cases holding the opposite did not involve a duly appointed representative payee. The Washington Supreme Court's ruling in this matter conflicts with these decisions and effectively prohibits a child welfare agency from acting as a representative payee for the child. The *Keffeler* court's interpretation of the Act and its regulations is inconsistent with prior court decisions and the Administration's interpretation of its own regulations.

IV. CALIFORNIA COUNTIES, WHEN SERVING AS REPRESENTATIVE PAYEES, COMPLY WITH STATE AND FEDERAL LAWS THAT REQUIRE COUNTIES TO OBTAIN ALL AVAILABLE SOURCES OF INCOME FOR CHILDREN IN FOSTER CARE.

A county child welfare agency acts as a child's parent when it takes custody of an abused or neglected child. *In re Danielle W.* 207 Cal.App.3d 1227, 1235 (1989). In fact, California specifically seeks to provide dependent children with the custody, care and discipline equivalent to what should have been offered by the child's parents. Cal. Welf. & Inst. Code, § 16000. If a parent is financially able, federal law requires a parent to pay the reasonable costs of support of the child whether the child is in their custody, the custody of another parent or the custody of a county child welfare agency. In fact, the Act itself requires states

to seek financial support from the parents of children in foster care in order to qualify for federal child welfare funding. 42 U.S.C. § 654. To be eligible for AFDC-FC, a child must assign any rights to parental support to the county. 42 U.S.C. §§ 608(a)(3), 654, 671(a)(17).

California law also requires that parents contribute to the costs of care of their children. The California Supreme Court approves of counties seeking reimbursement from parents for support and maintenance of a child while in a foster home. *County of San Mateo v. Dell* 46 Cal.3d 1236 (1988). "[W]here a preexisting legal obligation of support of the dependent is established, there is no constitutional impediment to the state seeking reimbursement from the responsible family members of the reasonable costs of support and maintenance of such dependent. . . . " *Id.* at p. 1252; See also Cal. Welf. & Inst. Code, § 11477. Thus, based upon federal mandates, California law confirms county child welfare agencies' responsibility to seek reimbursement of foster care costs from parents, even if the parent is receiving public aid.

The procedures for using a child's social security benefits to support the child while in foster care is an analogous situation. Survivor's benefits are intended to help support a child if the child's parent has died. SSI payments are available to help support children who are financially needy and whose parents are disabled or who are disabled themselves. In short, both types of social security benefits are designed to provide for a child's support if its parents are unable to do so. Both federal and state guidelines require that counties obtain all available sources of income for the child in order for the child to be eligible to receive foster care funding through AFDC-FC. 42 U.S.C. § 671(a)(17); 45 C.F.R. § 233.20(a)(3)(ix); Cal.

Dept. Soc. Srvs. Manual of Policies and Procedures 44-103.1. Thus, the counties' procedures for acting as representative payees of foster children's benefits and using such benefits for the child's support are consistent with the counties' obligations to seek contribution from the parents for the costs of foster care and are authorized by the Administration's regulations.

V. THE *KEFFELER* RULING CREATES A DISPARITY BETWEEN CHILDREN ELIGIBLE FOR FEDERAL AFDC-FC UNDER TITLE IV-E AND THOSE ELIGIBLE FOR NON-FEDERAL AFDC-FC.

Following changes in the child welfare funding statutes in 1980, issues arose regarding the payment of benefits to children who may be eligible for both foster care funding and social security benefits. To resolve these questions, the U.S. Department of Health and Human Services Administration on Children and Families specifically opined that a child may receive benefits from both programs concurrently. U.S. Dept. Health & Human Srvs. Admin. for Children and Families Policy Announcement "Concurrent Eligibility for SSI and Title IV-E Foster Care Payments" ACYF-PA-94-02 (Feb. 4, 1994). Pursuant to SSI regulations, federal foster care payments under Title IV-E are deemed income to the minor and result in a dollar-for-dollar deduction in the SSI payment for the child. Soc. Sec. Admin. Program Operations Manual SI 00830.410 and SI 00830.170; U.S. Dept. of Health & Human Services Admin. for Children, Youth and Families, 8.4D. Such a federal policy contemplating the use and interaction of these two sources of funding evidences Congress' intention not to provide dual incomes to a child. Instead, these funding

programs for needy children were developed to compliment each other and ensure a child receives sufficient income for his or her current needs.

However, if *Keffeler* is upheld there will be a disparity in treatment between a child eligible for federal AFDC-FC under Title IV-E and a child eligible for non-federal AFDC-FC.[6] Under the Washington Supreme Court's ruling in *Keffeler*, a child eligible for non-federal AFDC-FC will receive full benefits under both the non-federal foster care system and the social security system, as opposed to a child eligible for federal AFDC-FC whose SSI payment will be reduced by the amount of the federal AFDC-FC payment.

In contrast, under the California Department of Social Services' current policy, children receiving federal and non-federal AFDC-FC benefits are treated the same. Under California policy, for a child eligible for non-federal AFDC-FC benefits, the SSI payment is treated as income and the state foster care benefit payment is reduced accordingly. Any remaining non-federal AFDC-FC benefits are used to supplement the cost of foster care if the SSI payments are less than the state foster care benefit. Cal. Dept. of Soc. Svcs. All County Letter No. 94-82 (Sept. 30, 1994). This results in equal income to a child receiving SSI under either federal or non-federal AFDC-FC programs.

---

[6] If children do not meet the federal AFDC-FC eligibility requirements set forth in the Act, they may still be eligible for child welfare funding through the state and counties of California. State and local welfare agencies refer to such funding as "non-federal AFDC-FC."

VI. CHILDREN ARE AT RISK OF LOSING CRITICAL STATE AND FEDERAL BENEFITS IF THE SOCIAL SECURITY BENEFITS ARE ALLOWED TO ACCRUE.

The court in *Keffeler* concluded that Washington did not act in the best interests of the beneficiaries by using benefits for the care and maintenance of foster children. *Keffeler*, 145 Wn.2d at 24. The court held that the benefits "could be used or conserved for other special needs of the child." *Ibid.* This analysis is based on the faulty assumption that the benefits can be "conserved" or invested for "special needs" even though the Act and the regulations make no mention of using the benefits for purposes other than for current maintenance.

To ensure that federal funds are provided to the most needy individuals, many public assistance programs include limitations upon the amount of money recipients can accumulate while receiving the benefits. For example, an SSI beneficiary may not have property worth over $2,000. 42 U.S.C. §§ 1382(a)(1)(B)(ii), 1382(a)(3)(B); 20 C.F.R. § 416.1205. Thus, if $2,000 in benefits accumulates in a foster child's account, the SSI benefits will be suspended and eventually terminated. 20 C.F.R. §§ 416.1324, 416.1335.[7] Termination of SSI benefits has both immediate and long-term adverse effects upon a foster child. While in foster care, the child will no longer receive the extra items

[7] Included in a representative payee's duties is the requirement a representative payee notify the Administration "of any event that will affect the amount of benefits the beneficiary receives or the right of the beneficiary to receive benefits." 20 C.F.R. § 416.635(b).

foster care, the child will no longer receive the extra items that a representative payee may purchase under the federal regulations. See, for example, 20 C.F.R. § 416.640. In the future, when a foster child whose SSI benefits have been terminated while in foster care is reunified with its parents, the family would be required to re-apply for the benefits. The parents would have to submit evidence to indicate the child is disabled and eligible for the SSI benefits, instead of simply requesting that they be appointed representative payee. 42 U.S.C. § 1383(p); 20 C.F.R. § 416.1321(b). An SSI application can be a complicated and cumbersome process that some parents are unable or unwilling to complete and, at a minimum, would delay the receipt of benefits.

In making these property limitations a condition for SSI eligibility, Congress made it clear that such benefits are not designed to establish a savings account for individuals to use in the future. Instead, SSI benefits are intended to provide a minimum level of income for a child. 20 C.F.R. § 416.110. By applying a child's SSI benefits toward the costs of foster care, county child welfare agencies are using SSI benefits as specified by both the SSI and the representative payee provisions.

Moreover, the accumulation of social security benefits may also effect the child's eligibility for healthcare through California's Medi-Cal program. Generally, a child in foster care automatically qualifies for healthcare through the Medi-Cal program. 22 C.C.R § 50201 *et seq*. However, a child will not be eligible for foster care funding under AFDC-FC if it has property over $10,000. Cal. Dept. Soc. Srvs. All County Ltr. 02-45 (June 25, 2002). Because Medi-Cal eligibility is linked to receipt of foster care funding, once accumulating this property, a child will no longer be

eligible for healthcare through Medi-Cal. 22 C.C.R. §§ 50203, 50205.

Thus, the consequence of *Keffeler* is that dependent children can become ineligible for the very state and federal programs that are meant to provide for them. The survivor's benefits and SSI payments at issue here are intended to support the current needs of the beneficiaries. Use of these benefits for other purposes, such as investment for undefined "special needs," would likely result in termination of the benefits and ineligibility for other programs. The *amici curiae* accordingly urge the Court to uphold the Administration's fair and reasonable interpretation of the representative payee provisions and allow social security benefits to be used as they were intended – to provide for the current needs of children in foster care.

CONCLUSION

For the foregoing reasons, the Washington Supreme Court's decision in *Guardianship Estate of Danny Keffeler v. Washington State Department of Social and Health Services, et al.* misconstrued the Act and would result in unintended consequences that would harm state and local child welfare agencies and the children that they serve. Accordingly, the *amici curiae* respectfully request the Court to reverse the *Keffeler* decision and to uphold the

Administration's interpretation of the representative payee provisions.

Respectfully submitted,

LLOYD W. PELLMAN
County Counsel
ADA GARDINER
Assistant County Counsel
Counsel of Record
CATHERINE J. PRATT
Deputy County Counsel
201 Centre Plaza Drive,
Suite 1
Monterey Park, CA 91754
(323) 526-6106

ALAN K. MARKS
County Counsel
JULIE J. SURBER
Deputy County Counsel
385 North Arrowhead
Avenue
Fourth Floor
San Bernardino, CA 92415

Appendix of Federal and State Policies Cited in Brief of *Amici* Counties of California and California State Association of Counties

INDEX

1. Cal. Dept. Soc. Srvs. All County Ltr. 94-82 (Sept. 30, 1994) ..... App. 1
2. Cal. Dept. Soc. Srvs. All County Ltr. 02-45 (June 25, 2002) ..... App. 7
3. Cal. Dept. Soc. Srvs. Manual of Policies and Procedures 44-103.1 ..... App. 11
4. Soc. Sec. Admin. Program Operations Manual SI 00830.410, "Foster Care Parents" ..... App. 15
5. Soc. Sec. Admin. Program Operations Manual SI 00830.170, "Income Based on Need" ..... App. 23
6. US Dept. of Health & Human Services, Admin. for Children, Youth & Families Policy Announcement ACF-CB-PA-94-02 "Concurrent Eligibility for SSI and Title IV-E Foster Care Payments" (Feb. 4, 1994) ..... App. 25
7. US Dept. of Health & Human Services Admin. for Children, Youth & Families 8.4D "General Title IV-E Requirements, Concurrent Receipt of Federal Benefits" ..... App. 30

STATE OF CALIFORNIA – HEALTH AND WELFARE AGENCY

[SEAL]

DEPARTMENT OF SOCIAL SERVICES
744 P Street, Sacramento, CA 95814

September 30, 1994

REASON FOR THIS TRANSMITTAL
[ ] State Law Change
[ ] Federal Law or Regulation Change
[ ] Court Order or Settlement Agreement
[X] Clarification Requested by One or More Counties
[ ] Initiated by CDSS

ALL-COUNTY LETTER NO. 94-82

TO: ALL COUNTY WELFARE DIRECTORS
ALL CHIEF PROBATION OFFICERS

SUBJECT: TREATMENT OF SUPPLEMENTAL SECURITY INCOME/STATE SUPPLEMENTARY PAYMENT (SSI/SSP) BENEFITS IN THE AID TO FAMILIES WITH DEPENDENT CHILDREN-FOSTER CARE (AFDC-FC) PROGRAM

Reference: ACL 94-42

Supersedes: ACIN I-65-91

The purpose of this All County Letter (ACL) is to provide instruction to counties on the treatment of SSI/SSP benefits in the federal and non-federal AFDC-FC programs.

BACKGROUND

SSI/SSP is a joint federal and state assistance program administered by the Social Security Administration (SSA) for persons who are aged, blind, or disabled and who meet the program's income and resources requirements.

On November 2, 1993, the U.S. Department Of Health And Human Services (DHHS) Administration for Children & Families (ACF) issued Action Transmittal (AT) 93-20 to clarify federal AFDC policy with respect to treatment of retroactive lump sum SSI payments. In addition, on February 4, 1994, the DHHS Administration on Children, Youth and Families (ACYF) issued ACYF Policy Announcement 94-02 which lifted the prohibition on concurrent receipt of Title IV-E Foster Care and Title XVI SSI benefits. These changes in federal policy concerning the treatment of retroactive non-recurring lump sum SSI/SSP benefits and the allowance of concurrent receipt of SSI/SSP and federal foster care benefits have generated numerous county questions.

FEDERAL AFDC-FC

As of February 4, 1994, federal AFDC-FC payments may be made to otherwise eligible children receiving SSI/SSP benefits, and the SSI/SSP benefits are not to be counted as income in the federal AFDC-FC program. Where federal foster care payments are made to an SSI/SSP eligible child the SSA will reduce the SSI/SSP payments on a dollar for dollar basis. When federally eligible AFDC-FC children are dependents and/or wards of the court, the county welfare department (CWD) should become the designated SSI/SSP payee. In those relatively few instances where the federally eligible AFDC-FC child

is not a dependent or ward and serves as their own SSI/SSP payee (i.e., youth age 18 receiving AFDC-FC until graduation) the CWD will disregard SSI/SSP benefits and the SSA will adjust the SSI/SSP payment as noted above. Where the costs of foster care are less than SSI/SSP payment levels, any remaining SSI/SSP benefit is treated as a resource in the following month as noted below in the "Property" section.

NON-FEDERAL AFDC-FC

For children receiving non-federal AFDC-FC benefits, SSI/SSP payments are to be treated as income for foster care eligibility purposes because the SSA will not adjust the SSI/SSP payment as is their practice in federal foster care cases. Again, the CWD should become the designated payee for dependents and wards. Non-federal AFDC-FC benefits may be used to supplement the cost of out-of-home care if the SSI/SSP payment levels do not cover the cost of placement in accordance with existing Eligibility and Assistance Standards (EAS) Manual section 45-302.11. Supplementation of SSI/SSP will non-federal AFDC-FC is only allowed when the following conditions are met:

- The child meets all general and state AFDC-FC eligibility requirements.
- The cost of foster care placement exceeds the amount of the SSI/SSP benefit level.
- The child is not otherwise eligible for federal AFDC-FC benefits.

In those relatively few instances where the non-federally eligible AFDC-FC child is not a dependent or

ward and he/she or a guardian serves as SSI/SSP payee (i.e., youth age 18 receiving AFDC-FC until graduation, or a child living with a non-related legal guardian [NRLG]) the CWD will count the SSI/SSP benefits as income available to the child and supplement as indicated above if the child is eligible and the foster care placement cost exceeds the SSI/SSP benefit. Where the costs of foster care are less than SSI/SSP payment levels, any remaining SSI/SSP benefit becomes the property of the child in the following month and must be treated in accordance with regulation.

SSI/SSP LUMP SUM PAYMENTS IN THE AFDC-FC PROGRAM

As noted above, ACF-AT-93-20 clarifies federal AFDC policy with respect to treatment of lump sum retroactive SSI payments collected during the SSI/SSP retroactive period. This retroactive period is described as the "SSI application processing or determination period, which varies depending on the time it takes to develop a claim." Because the family or recipient may have incurred debts for specialized care during the retroactive period, the policy states that non-recurring lump sum SSI/SSP retroactive payment, "made to an AFDC recipient, shall not be counted as income or a resource for AFDC purposes in the month paid and the next following month."

Therefore, a non-recurring lump sum SSI/SSP retroactive payment made to an AFDC-FC eligible child shall not be counted as income or a resource for AFDC-FC purposes in the month paid and the next following month. After that time all residuals would be considered a resource and treated according to property regulations

referenced below. To ensure equity, this policy will apply to children in both the federal and state AFDC-FC programs.

INTERIM ASSISTANCE REIMBURSEMENT AGREEMENTS

For non-federal AFDC-FC children, counties should attempt to recover any interim assistance paid on behalf of a child who subsequently receives a retroactive SSI/SSP payment by using the Interim Assistance reimbursement (IAR) procedures described in ACL 94-42. If there is a residual after the interim assistance reimbursement process is completed, that remainder is to be treated as property as described above under "SSI/SSP Lump Sum Payments" section. Similarly, where recovery through the IAR process is not possible, the retroactive SSI/SSP payment is to be treated in accordance with the policy described above.

PROPERTY

With the exception of those limits placed on treatment of retroactive SSI/SSP lump sum payments described above, property which is the result of SSI/SSP income accumulation shall be treated in accordance with EAS section 42-201.1; if it is available to the applicant or recipient, it is countable as a resource in determining AFDC-FC eligibility.

ADDITIONAL REQUIREMENTS

EAS section 40-109.2 states that a person or his or her representative who believes the applicant meets the

eligibility requirements for more than one category of aid has the right to choose the type of aid he/she will apply for. Since AFDC-FC and SSI/SSP are both aid programs, the county representative can choose the program that best meets the needs of the foster child. Counties are encouraged to review the circumstances in each case to determine which of several options ensures that county, state and federal funds are expended in the most cost-beneficial manner.

If you have any general questions pertaining to SSI/SSP, they should be directed to the local office of the federal SSA office. Questions regarding the IAR procedures should be referred to the county's IAR Coordinator. For questions pertaining to the AFDC-FC programs, please contact the Foster Care Policy Bureau at (916) 445-0813.

/s/ Marjorie Kelly
MARJORIE KELLY
Deputy Director
Children and Family
Services Division

STATE OF CALIFORNIA – HEALTH
AND HUMAN SERVICES AGENCY

GRAY DAVIS, Governor

[SEAL]

DEPARTMENT OF SOCIAL SERVICES
744 P Street, Sacramento, California 95814

June 25, 2002

REASON FOR THIS TRANSMITTAL
[ ] State Law Change
[ ] Federal Law or Regulation Change
[ ] Court Order
[ ] Clarification Requested by One or More Counties
[X] Initiated by CDSS

ALL-COUNTY LETTER NO. 02-45

TO: ALL COUNTY WELFARE DIRECTORS
ALL CHIEF PROBATION OFFICERS
ALL JUVENILE COURT JUDGES
ALL COUNTY COUNSELS

SUBJECT: **MODIFICATIONS TO THE AID TO FAMILIES WITH DEPENDENT CHILDREN-FOSTER CARE PROGRAM (AFDC-FC)**

SUPERSEDES: ALL COUNTY LETTER 02-29

Recently, the California Department of Social Services (CDSS) submitted an updated Title IV-E State Plan to the U.S. Department of Health and Human Services (DHSS) for approval. During the review process, DHHS identified three areas which required further instructions/clarification from CDSS to the counties.

$10,000 Property Limit

42 United States Code 672 (a) provides that each child in foster care can have up to $10,000 in property regardless of age or participation in the Independent Living Program (ILP). Accordingly, for State and federal AFDC-FC, any child may now retain up to $10,000 in property. For purposes of determining whether the child would have been eligible for AFDC in the petition month as required by Eligibility and Assistance Standards (EAS) Manual 45-202.33, the family may also have up to $10,000 in property and still qualify for AFDC. The $10,000 is in addition to the $1,500 vehicle limit. This increased property limit is effective December 14, 1999.

Transitional Independent Living Plans (TILP)

42 United States Code 675(5)(C) provides, "procedural safeguards will be applied . . . to assure each child in foster care . . . of a permanency hearing to be held, in a family or juvenile court . . . no later than 12 months after the date the child is considered to have entered foster care . . . and not less frequently than every 12 months thereafter . . . which hearing *shall determine . . . in the case of a child who has attained age 16, the services needed to assist the child to make the transition from foster care to independent living . . .*"

This section of federal statute requires that the court consider services available and necessary for the child to transition to adulthood. In accordance with Manual of Policy and Procedures (MPP), Division 31, Sections 31-525.1 through .5, the county social worker must develop a TILP for each eligible youth in placement by the age of 16. Once the appropriate ILP services have been identified,

participation in ILP must become part of a youth's individual needs and services plan and incorporated into the child case plan pursuant to MPP, Section 31-206.37. Pursuant to Welfare and Institutions Code, Section 366.22, the court shall review and consider the social worker's report/case plan and recommendations at each permanency review hearing when making its determination on whether to return the child to their parent or guardian. Accordingly, counties are reminded to include the TILP in the child's case plan when submitting these documents to the court so that it may consider these services at each permanency planning hearing.

Termination of Parental Rights

DHHS has asked the CDSS to clarify how counties determine when to file a termination of parental rights for a child in foster care.

45 Code of Federal Regulations (CFR) 1356-20(i)(1) provides, " . . . the State must file a petition to terminate the parental rights (TPR) of a parent(s):

(i) Whose child has been in foster care under the responsibility of the State for 15 of the most recent 22 months. The petition must be filed by the end of the child's fifteenth month in foster care."

The county must calculate the 15 of 22 months period from the "date the child entered foster care" as defined in Welfare and Institutions Code, Section 361.5(a). For children with multiple foster care placement episodes within the 22 month period, the county must use a cumulative method of calculating 15 months in foster care. However, the 15 month period cannot include trial home visits or runaway episodes.

TPRs need not be filed in the following circumstances [from 45 CFR 1356.21(i)(2)]:

- The child is being cared for by a relative;
- The county has documented a compelling reason for determining that filing a petition for TPR is not in the best interest of the child. Compelling reasons include, but are not limited to; adoption is not an appropriate permanent plan for the child; no grounds to file a TPR exist; the child is an unaccompanied refugee minor; there are foreign policy reasons that would preclude a TPR; or the county has NOT provided reasonable services to reunify the child.

If you have any questions about filing a TPR petition, please contact the Permanency Policy Bureau at (916) 322-4228. If you have questions about eligibility for AFDC-FC benefits or TILPs, please contact the Funding and Transitional Youth Programs Bureau at (916) 324-5809.

Sincerely,

ORIGINAL SIGNED BY

SYLVIA PIZZINI
Deputy Director
Children and Family Services Division

c: CWDA

STANDARDS OF ASSISTANCE
44-102 (Cont.) INCOME Regulations

* * *

44-102 AVAILABILITY OF INCOME 44-102
(Continued)

d. MONTHLY RECURRING UNEARNED GOVERNMENTAL BENEFITS – Monthly benefits (e. g., Social Security benefits, or Veterans benefits, etc.) shall be considered to be available in the month the payment was intended, rather than actually received, when the income meets the following criteria:

1. The receipt date of the income varies because mailing cycles cause two payments to be received in one month and none in the preceding or following month;
2. The source of income is a governmental benefit program; and
3. The income is unearned and recurring.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Section 11157 (Ch. 270, Stats. 1997), Welfare and Institutions Code.

44-103 EXPLORATION OF INCOME POTENTIALS AND INCOME VERIFICATION 44-103

.1 County Responsibility

.11 The county shall:

.111 Review, with the applicant or recipient, all his/her resources to determine income-producing potential.

.112 Determine whether income is actually received and, if so:

(a) The regularity of receipt,

(b) The gross or net amount, as appropriate,

(c) The applicant's or recipient's share, and

(d) Whether the income is excluded or exempt, in whole or in part.

.114 Repealed by Manual Letter No. EAS-93-08, effective 7/1/93.

.115 Repealed by Manual Letter No. EAS-93-08, effective 7/1/93.

.116 Repealed by Manual Letter No. EAS-93-08, effective 7/1/93.

.117 Repealed by Manual Letter No. EAS-93-08, effective 7/1/93.

.118 Repealed by Manual Letter No. EAS-93-08, effective 7/1/93.

.12 The county shall examine income available to the applicant or recipient from the following potential sources:

.121 Social Insurance, i.e., OASDI, Railroad Retirement, Unemployment Insurance, Disability Insurance, etc.

.122 Benefits available to veterans of military service, members of military service, their spouses, and their dependents.

.123 Rights and interests in real and personal property.

.124 Responsible relatives who may be contributing or have a legal liability to contribute.

.125 Other persons who may be contributing.

.126 Recipient's capacity for self-help and employment.

.127 Private pension plans, union welfare funds, life insurance disability benefits, and other forms of assistance.

.2 Applicant and Recipient Responsibility

.21 The applicant or recipient, including the person responsible for the child shall provide information necessary to determine income.

.22 The requirement in Section 44-103.21 is considered to be met on the date of application as long as it is completed by the date of authorization of aid.

.23 The county shall deny or discontinue aid, including immediate need, to the AU when the applicant or recipient fails or refuses to provide information necessary to determine income.

.231 Repealed by Manual Letter No. EAS 93-108, effective 7/1/93.

.24 Repealed by Manual Letter No. EAS 93-108, effective 7/1/93.

.3 Repealed by Manual Letter No. EAS 93-108, effective 7/1/93.

NOTE: Authority cited: Sections 10553, 10554, 10604, and 11209, Welfare and Institutions Code. References: Sections 10553, 10554, 10604,, and 11270, Welfare and

Institutions Code; and 45 CFR 233.10(a)(1) and 233.20(a)(3)(ix).

* * *

SI 00830.410 Foster Care Parents

Citations:

Sections 1612(a)(2) and 1612(b) of the Social Security Act; 20 CFR 416.1102, 416.1103, 416.1120, 416.1121(a), 416.1124(c)(2), and 416.1124(c)(12)

A. DEFINITIONS

1. Foster Care

An individual is considered to be in foster care when:

- a public or private nonprofit agency places the individual under a specific placement program; and
- the placement is in a home or facility which is licensed or otherwise approved by the State to provide care; and
- the placing agency retains responsibility for continuing supervision of the need for such placement and the care provided.

2. Foster Care Payment

For SSI purposes, a foster care payment is a payment made to the foster care provider for the purposes of meeting the needs of the individual in care. (This includes not only the individual's need for food, clothing and shelter but also education, transportation, etc.).

NOTE: An agency may make an additional payment to the foster care provider for his/her own use (e.g., an incentive or service payment not intended to support the child). While these two payments may be combined and termed the "foster care payment" by the issuing agency, only the

part which is provided to meet the needs of the individual in care is the foster care payment for SSI purposes.

B. BACKGROUND

1. Foster Care Payments – General

a. Who Can Receive Foster Care Payments

Foster care payments are provided for both children and adults.

NOTE: The source of the payment might not be the placement agency. Sometimes placement is by one agency and the source of payment is another agency or an individual.

b. Treatment of Foster Care Payments

Treatment of foster care payments depends on the funding source of the payments, the purpose of the payments, and whether the SSI recipient is the provider or recipient of the care.

2. Foster Care Under Title IV-E

a. Administration of Title IV-E Foster Care

At the Federal level, the foster care program authorized by title IV-E of the Social Security Act is administered by the Administration for Children and Families (ACF). Title IV-E provides for Federal matching funds to States for foster care under certain circumstances.

b. Type of Children Placed Under Title IV-E Foster Care

Children who are placed under title IV-E foster care are children who would have been eligible to receive Aid to Families with Dependent Children (AFDC) or Temporary Assistance to Needy Families (TANF) had they not been removed from their homes. These children are categorically eligible for Medicaid.

c. Availability of Title IV-E Funds

Title IV-E funds are available for care in a family home or a private child care institution, or in a public child care institution which accommodates no more than 25 children.

C. POLICY – FOSTER CARE PAYMENTS

1. Title IV-E Foster Care Payments

a. Individual in Care

Foster care payments made under title IV-E (both the Federal amount and State amount) are considered income based on need (IBON) (*SI00830.170*) to the individual in care. This income is not subject to the $20 general exclusion and is not ISM. (See *SI 02005.025* for prospective accounting rules for title IV-E payments.)

EXCEPTION: Section 477 of title IV-E (Independent Living Initiatives) is a program for individuals age 16 or over making the transition from foster care to independent living. Payments made under Section 477 of title IV-E are cash assistance from a governmental social services program and, therefore, are not income (*SI 00815.050*).

b. Foster Care Provider

- Foster care payments (as defined in *SI 00830.410A.2.*) are not income to the provider.
- Amounts paid to a provider of foster care in excess of the foster care payment are income to the provider.

2. Title IV-B or Title XX Foster Care Payments

Foster care payments involving funds provided under title IV-B or title XX of the Social Security Act are social services and are not income.

3. Certain State- or Locally-Funded Foster Care Payments

Foster care payments funded wholly by a State or local government and under a program that uses income as a factor of eligibility are assistance based on need (ABON) (*SI 00830.175*). ABON is excluded from income.

4. Other Foster Care Payments

Foster care payments not described above are subject to the general rules pertaining to income and income exclusions.

NOTE: Assuming the foster care provider gives no cash to the individual in care (*SI 00830.410D.4.*), an individual in foster care whose foster care payment has no Federal funds involved may derive in-kind income but does not derive cash income directly from the foster care payment (*SI 00835.790*).

5. Filing for Other Benefits

An individual is **never required** to file for foster care payments in order to receive SSI.

D. PROCEDURE

1. Title IV-E Foster Care Payments

- Verify the frequency and amount of title IV-E foster care payments (and any amounts paid to the provider in excess of the foster care payments) by using documents in the individual's possession or by contacting the appropriate State agency.
- Follow any regional, State, or local verification procedures.

NOTE: In an initial claim, if countable income, including any title IV-E foster care payments, exceeds the FBR, the claim should be denied for excess income.

2. Title IV-B or Title XX Foster Care Payments

Use documents in the individual's possession, FO or regional precedents, or contact with the agency to verify title IV-B or title XX involvement.

3. Certain State- or Locally-Funded Foster Care Payments

Use documents in the individual's possession, FO or regional precedents, and/or contact with the agency to verify that the assistance is ABON. If so, exclude the payment from income.

4. Other Foster Care Payments

- Assume that the provider of foster care gives no cash to the individual in care, absent evidence to the contrary.
- Keep in mind that an individual whose foster care payment has no Federal funds involved may derive in-kind income but does not derive cash income directly from the foster care payment

  (*SI00830.410C.3.*).
- Determine the nature of the foster care and apply the appropriate rules pertaining to income. Consult any regional instructions on foster care payments.
- Assume that the payment made to the provider of foster care is to meet the needs of the individual in care and, thus, is not income to the provider, absent evidence to the contrary.

5. Foster Care Payments to Providers of Foster Care

- **Verify that the placement meets the definition of foster care in *SI 00830.410A.1.*** Use documents in the individual's possession, field office or regional precedents, or contact with the agency. If a precedent has been established, document the file to show this.

Generally, accept the allegation of the placement agency as to its nonprofit (tax exempt) status without further verification.

NOTE: Determinations of tax exempt status are made by the Internal Revenue Service (IRS), and in a few situations where the status is unknown or questionable, it

should be verified by seeing the agency's tax-exempt IRS letter, or by contacting IRS.

- **Assume that the payment made to the provider is a foster care payment** (i.e., is to meet the needs of the individual in care) and is not income to the provider, unless there is evidence to the contrary.
- **If the provider is an SSI recipient or deemor and evidence indicates a payment includes additional monies above the foster care payment**, verify the purpose(s) of the payment and the amounts involved using documents in the individual's possession, FO or regional precedents, or contact with the agency. Consider any payment in excess of the amount paid to meet the needs of the individual to be income to the care provider.

NOTE: This income is usually unearned income but may be earned income (see *RS 01802.000* for self-employment earnings).

If the care provider is not self-employed and evidence indicates a payment was made for a specific service (e.g., $20 for shopping assistance), accept the care provider's signed allegation of any cost of providing the service (e.g., $5 automobile expense). Deduct the cost from the payment (*SI 00830.100*) and consider the remainder to be unearned income.

E. REFERENCES

- Forms and amounts of income, *SI 00810.020*.
- $20 general income exclusion, *SI 00810.420*.
- Medical and social services, *SI 00815.050*.

- Assistance based on need, *SI 00830.175*.
- Foster care payments made by the Bureau of Indian Affairs, *SI 00830.810*.
- ISM in Non-institutional Care, *SI 00835.790*.

http://policy.ssa.gov/poms.nsf/lnx/0500830410

SI 00830.170 Income Based on Need (IBON)

Citations:

Social Security Act, as amended, sections 1612(a)(2) and 1612(b)(2)(A); 20 CFR 416.1124(c)(12)

A. DEFINITION

Income based on need (IBON) is assistance:

1. provided under a program which uses income as a factor of eligibility; and
2. funded wholly or partially by the Federal government or a nongovernmental agency (e.g., Catholic Charities or the Salvation Army) for the purpose of meeting basic needs (i.e., the funds are provided specifically for a formalized program whose general purpose is similar to that of the SSI program).

EXCEPTION: State supplementary payments (as defined in *SI 01401.001*ff. made to refugees are not IBON (see *SI 00830.175*), despite involvement of Federal funds.

B. POLICY PRINCIPLE

Income based on need is counted as income dollar for dollar, unless it is totally excluded by statute (e.g., food stamps) or excluded under a PASS (*SI 00870.001*ff.). The $20 general income exclusion (*SI00810.420*) does not apply to IBON.

NOTE: If a nongovernmental agency is involved, consider whether the assistance qualifies for exclusion as HEA/SMA (*SI 00830.605*) or meets the definition of a social service (*SI 00815.050*).

C. OPERATING PROCEDURES

NOTE: These instructions apply when there are no separate instructions pertaining specifically to the program in question. Check both national and regional instructions first.

1. Verify with the administering agency personnel and/or program descriptions that the assistance meets the definition of income based on need. A field office precedent established within the preceding year, or a precedent established by regional instructions may be used.

2. Verify the amount of the assistance for each month with the administering agency or through documents in the individual's possession.

3. If income based on need is paid to or on behalf of a group of people, determine one individual's income by the incremental method (i.e., the individual's income is the difference between the amount paid and the amount which would have been paid had the individual not been included).

http://policy.ssa.gov/poms.nsf/lnx/0500830170

ACF
Administration for Children and Families

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Administration for Children, Youth and Families

1. Log No.: 2. Issuance Date: February 4, 1994 3. Originating Office: Children's Bureau 4. Key Word: Concurrent Eligibility for SSI and Title IV-E Foster Care Payments

POLICY ANNOUNCEMENT

TO: State Administrators of Public Child Welfare Agencies, Directors of Adoption Assistance Programs and Foster Care Programs Under Title IV-E of the Social Security Act

SUBJECT: Title XVI Supplemental Security Income (SSI) and Title IV-E Payments – Concurrent Eligibility for Payments From Title IV-E Foster Care and SSI; Concurrent Eligibility for Payments From Title IV-E Adoption Assistance and SSI. This Policy Announcement Supersedes ACYF-PA-83-05.

LEGAL AND RELATED REFERENCES: Public Law 96-272; Sections 402(a)(24), 408, 470, 472, and 473 of the Social Security Act; ACYF-PA-83-05 dated December 14, 1983, SSA-AT-79-14 dated April 24, 1979, and APA-IM-74-03 dated November 3, 1973; 20 CFR 416.1100ff and 416.1200ff; and PROGRAM OPERATIONS MANUAL SYSTEM, Part 5, Supplemental Security Income Chapter 008 – Income – Subchapter 30-Unearned Income.

BACKGROUND: Several inquiries have been received from the Regional Offices as to whether the current prohibition of concurrent receipt of title IV-E Foster Care Maintenance payments and title XVI Supplemental

Security Income (SSI) payments, as promulgated in Policy Announcement ACYF-PA-83-05, is the only possible interpretation of the Social Security Act and corresponding Federal Regulations. Questioners have noted that concurrent receipt of title IV-E adoption assistance and SSI is allowed.

Public Law 96-272, the Adoption Assistance and Child Welfare Act of 1980, established a new part E under title IV of the Social Security Act (the Act). Part E provides Federal matching funds for the costs of foster care maintenance (formerly provided for under title IV-A of the Act) and adoption assistance payments for certain eligible children.

Eligibility for foster care maintenance under title IV-E (section 472(a)) is based on receipt of or eligibility for Aid to Families with Dependent Children (AFDC) under title IV-A of the Act. Eligibility for adoption assistance (section 473(a)) is based on receipt of or eligibility for AFDC or eligibility for Supplemental Security Income benefits (SSI) as provided under title XVI of the Act.

In response to Regional queries, ACYF has changed its policy to allow concurrent eligibility for payments from SSI and title IV-E foster care, as is already allowed with SSI and title IV-E adoption assistance.

POLICY INTERPRETATION: This Policy Announcement supersedes ACYF-PA-83-05. Concurrent eligibility for payments from either title IV-E foster care maintenance or title IV-E adoption assistance and title XVI (SSI) is permissible.

B. Title IV-E Foster Care

There is no prohibition in title IV-E against claiming FFP for foster care maintenance payments made on behalf of a child who is receiving SSI benefits. Federal matching funds for the costs of foster care maintenance for certain eligible children formerly provided under title IV-A (Section 408) of the Act are now provided under title IV-E foster care (section 472). Although eligibility for title IV-E foster care is tied to eligibility for title IV-A (section 472(a)) and title IV-A precludes concurrent eligibility for payments from title IV-A and title XVI (section 402(a)(24)), this preclusion rule is not transferable to title IV-E for the purposes of foster care maintenance payment eligibility determinations. A child, if eligible, may receive benefits from both programs simultaneously.

D. Title IV-E – Adoption Assistance

There is no prohibition under title IV-E against claiming FFP for adoption assistance for a child who receives benefits from SSI. Section 473 of title IV-E created an adoption assistance program which permits Federal matching funds for the costs of adoption assistance for the purpose of encouraging the placement of eligible children in adoptive homes. Under title IV-E adoption assistance (section 473), the scope of eligibility specifically includes children with special needs who are eligible to receive SSI (473(a)(2)(A)(ii)) as well as those eligible for AFDC (473(a)(2)(A)(i)) and title IV-E foster care (473(a)(2)(A)(iii)).

Title XVI (SSI) is a needs based program and, as such, requires a test of income and resources of the adoptive parents in determining the amount of the

SSI benefit to which a child with a disability(ies) may be entitled. If (or when) the parental resources and income exceed a maximum level determined by the SSI program, the child is no longer eligible for SSI payments. If the adoptive parents decide to decline adoption assistance and choose to receive only SSI for the child, and if they have not executed an adoption assistance agreement before the adoption is finalized, they may not later receive title IV-E adoption assistance payments, as the child would no longer meet all of the eligibility requirements as a child with special needs (section 4739(c)(2)). It may be prudent for the decision maker (parent, guardian, custodian, caretaker relative) to arrange for an adoption assistance agreement which does not provide for payment, but which does provide for title XVI and title XIX coverage, and which may at some future date, upon review, be renegotiated to provide for payment of adoption assistance funds.

As with title IV-E foster care, the adoptive parents of a child eligible for title IV-E adoption assistance and SSI benefits may make application for both programs and the child, if eligible, may benefit from both programs simultaneously.

DISCUSSION In cases where the child is eligible for both SSI and title IV-E and there is concurrent receipt of payments from both programs, "the child's SSI payment will be reduced dollar for dollar without application of any exclusion", thus decreasing the SSI benefit by the amount of the title IV-E payment (SSI Program Operations Manual). To reiterate, concurrent receipt is subject to the SSI rule that the SSI payment will be reduced by the amount of the foster care payment.

ACTION REQUIRED: The difference between title XVI (SSI) and title IV-E should be considered carefully by the decision maker when choosing whether to apply for either or both title IV-E or SSI benefits on behalf of the child. Information regarding the benefits available under each program should be made available by the State title IV-E agency so that an informed choice can be made in the child's best interest. To achieve this goal, title IV-E agencies should exchange information regarding eligibility requirements and benefits with local Social Security district offices and establish formal procedures to refer clients and their representatives to the local Social Security district office for consultation and/or application when appropriate.

EFFECTIVE DATE: Upon Issuance.

INQUIRIES TO:

Regional Administrators, ACF
Olivia Golden
Commissioner
Administration on Children, Youth and Families

Printer-Friendly Versions Table of Contents

[This Subsection] [This Section] [Entire Manual]

8.4D TITLE IV-E, General Title IV-E Requirements, Concurrent Receipt of Federal Benefits

---

What is the Department's policy, under title IV-E, on concurrent receipt of benefits under title IV-E and Supplemental Security Income (SSI)?

How should the decision to apply for SSI or title IV-E benefits be made?

May we claim title IV-E administrative costs for eligible children who receive Supplemental Security Income (SSI)?

Question: What is the Department's policy, under title IV-E, on concurrent receipt of benefits under title IV-E and Supplemental Security Income (SSI)?

Answer: There is no prohibition in title IV-E against claiming Federal financial participation (FFP) for foster care maintenance payments or adoption assistance payments made on behalf of a child who is receiving SSI benefits.

Foster Care: Although eligibility for title IV-E foster care is tied to eligibility for Aid to Families with Dependent Children (AFDC) as was in effect on July 16, 1996 and AFDC precluded concurrent eligibility for payments from AFDC and title XVI (section 402(a)(24) of the Social Security Act), this preclusion rule is not transferable to title IV-E for the purposes of foster care maintenance payment eligibility determinations. A child, if eligible, may receive benefits from both programs simultaneously.

In cases where the child is eligible for both SSI and title IV-E and there is concurrent receipt of payments from both programs, "the child's SSI payment will be reduced dollar for dollar without application of any exclusion", thus decreasing the SSI benefit by the amount of the title IV-E payment (SSI Program Operations Manual). To reiterate, concurrent receipt is subject to the SSI rule that the SSI payment will be reduced by the amount of the foster care payment.

Adoption Assistance: In the Adoption Assistance program, the applicant may choose to apply for either or both SSI and adoption assistance. Concurrent receipt of benefits from the adoption assistance program and SSI is not prohibited under title IV-E (section 473).

Section 473 of title IV-E created an adoption assistance program which permits Federal matching funds for the costs of adoption assistance for the purpose of encouraging the placement of eligible children in adoptive homes. Under title IV-E adoption assistance (section 473), the scope of eligibility includes children with special needs who are eligible to receive SSI as well as those eligible for AFDC and title IV-E foster care. The statute's intention to extend the program of adoption assistance is clearly stated in section 473(a)(1)(A)(ii): "Each State . . . shall . . . make adoption assistance payments . . . to parents . . . who . . . adopt a child who . . . (ii) meets all of the requirements of title XVI with respect to eligibility for supplemental security income benefits. . . ."

The adoptive parents of the child eligible to receive title IV-E adoption assistance payments and SSI benefits may make application for both programs and the child, if eligible, may receive benefits from both programs. In considering the most appropriate choice o [sic]

programs and deciding whether to make application for one or both, the adoptive parents should be aware of the differences between SSI and the Adoption Assistance Program.

Title XVI (SSI) is a needs based program and, as such, requires a test of income and resources of the adoptive parents in determining the amount of the SSI benefit to which a disabled child may be entitled. If (or when) the parental resources and income exceed a maximum level determined by SSI, the child is no longer eligible for SSI payments.

In cases where the income and resources of the adoptive parents do not affect the child's eligibility for SSI and

there is concurrent receipt of payments from both programs, SSI will then count dollar-for-dollar the amount of title IV-E adoption assistance paid to the parents, thus decreasing the SSI benefit by the amount of the adoption assistance payment.

In the Adoption Assistance Program, the amount of the adoption assistance payment is determined after taking into consideration the circumstances of the adopting parents and the needs of the child being adopted. While the child's SSI benefit would be a consideration in the negotiation of the amount of the adoption assistance payment as part of the determination of the needs of the child being adopted, this income would not generate an automatic reduction in any standardized payment amount, as in the SSI program. The amount agreed upon by the adoptive parents and the administering agency is limited, however, to the amount of the foster care maintenance payment which would have been paid if the child had been in a foster family home (section 473(a)(2)).

Because there are many complexities and financial implications for the States as well as the adoptive families, it is important for all parties to discuss all aspects of a combination of SSI and adoption assistance at the time the adoption assistance agreement is negotiated. Such discussions could include, in addition to the adoptive parents, representatives from title IV-E and title XVI programs.

With full knowledge of the SSI and Adoption Assistance programs, the adoptive parents can then make an informed decision about application for or receipt of benefits from either or both programs for which they or the child are eligible. They should be advised, however, that if they decline title IV-E adoption assistance and choose to receive

only SSI for the child, and if they do not execute an adoption assistance agreement before the adoption is finalized and do not receive adoption assistance payments pursuant to such an agreement, they may not later receive title IV-E adoption assistance payments, as the child would no longer meet all of the eligibility requirements as a child with special needs (section 473(c)(2)).

- **Source/Date:** ACYF-CB-PA-94-02 (2/4/94)
- **Legal and Related References:** Social Security Act – sections 402(a)(24), 406(a) and 407 (as in effect on July 16, 1996) and 472(a) and 473(a); Program Operations Manual System, Part 5, Supplemental Security Income Chapter 008 – Income, Subchapter 30 – Unearned Income

Back to top

Question: How should the decision to apply for SSI or title IV-E benefits be made?

Answer: The difference between title XVI (SSI) and title IV-E should be considered carefully by the decision maker when choosing whether to apply for either or both title IV-E or SSI benefits on behalf of the child. Information regarding the benefits available under each program should be made available by the State title IV-E agency so that an informed choice can be made in the child's best interest. To achieve this goal, title IV-E agencies should exchange information regarding eligibility requirements and benefits with local Social Security district offices and establish formal procedures to refer clients and their representatives to the local Social Security district office for consultation and/or application when appropriate.

- **Source/Date:** ACYF-CB-PA-94-02 (2/4/94)
- **Legal and Related References:** Social Security Act – titles IV-E and XVI

Back to top

Question: May we claim title IV-E administrative costs for eligible children who receive Supplemental Security Income (SSI)?

Answer: Yes. An August 17, 1993 memorandum from the Acting Commissioner of the Administration on Children, Youth, and Families to the Administration for Children and Families Regional Administrators allowed a State to include children who are eligible for title IV-E but who are receiving SSI in lieu of title IV-E foster care maintenance payments when determining its administrative cost ratio. This practice was conceptualized by considering these children candidates for foster care. While the policy itself is sound, a child who is in foster care is not a candidate because s/he has already been removed from home. If a child is fully eligible for title IV-E a State's choice to fund that child's board and care through SSI rather than title IV-E does not negate that child's eligibility for title IV-E. The State may, therefore, claim Federal financial participation under title IV-E for title IV-E administrative functions performed on behalf of that child.

- **Source/Date:** ACYF-CB-PA-01-02 (7/3/01)
- **Legal and Related References:** Social Security Act – sections 471 and 474

Back to top

▼ Home ◀ Back ▲ Top

Supreme Court U.S.
FILED
AUG 2 2002
OFFICE OF THE CLERK

No. 01-1420

In the

Supreme Court of the United States

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, ET AL.,
Petitioners,
v.
GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, GUARDIAN, AND OTHERS SIMILARLY SITUATED,
Respondents.

ON A WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

BRIEF OF THE STATES OF FLORIDA, ALABAMA, ALASKA, ARIZONA, CALIFORNIA, COLORADO, DELAWARE, GEORGIA, HAWAII, ILLINOIS, INDIANA, IOWA, KANSAS, LOUISIANA, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, MISSISSIPPI, MISSOURI, NEBRASKA, NEVADA, NEW HAMPSHIRE, NEW JERSEY, NEW YORK, OHIO, OKLAHOMA, OREGON, RHODE ISLAND, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, TEXAS, UTAH, VERMONT, VIRGINIA, WEST VIRGINIA, WISCONSIN AND WYOMING, THE COMMONWEALTH OF PUERTO RICO, AND THE TERRITORIES OF THE VIRGIN ISLANDS AND AMERICAN SAMOA AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

ROBERT A. BUTTERWORTH
Attorney General of Florida
THOMAS E. WARNER
Solicitor General of Flori
Counsel of Record
MATTHEW J. CONIGLIARO
Deputy Solicitor General
Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399-1050
(850) 414-3681

(Additional Counsel Listed Within)

WILLIAM H. PRYOR, JR.
Attorney General of Alabama
11 S. Union Street
Montgomery, AL 36130

M. JANE BRADY
Attorney General of Delaware
820 French Street
Wilmington, DE 19801

BRUCE M. BOTELHO
Attorney General of Alaska
P.O. Box 110300
Juneau, AK 99811

THURBERT E. BAKER
Attorney General of Georgia
40 Capitol Square SW
Atlanta, GA 30334

FITI A. SUNIA
Attorney General of American Samoa
P.O. Box 7
Pago Pago, AS 96799

EARL I. ANZAI
Attorney General of Hawaii
425 Queen Street
Honolulu, HA 96813

JANET NAPOLITANO
Attorney General of Arizona
1275 W. Washington
Phoenix, AZ 85007

JAMES E. RYAN
Attorney General of Illinois
100 W. Randolph Street
Chicago, IL 60601

BILL LOCKYEAR
Attorney General of California
P.O. Box 944255
Sacramento, CA 94244

STEVE CARTER
Attorney General of Indiana
402 West Washington Street
Indianapolis, IN 46204

KEN SALAZAR
Attorney General of Colorado
1525 Sherman Street
Denver, CO 80203

THOMAS J. MILLER
Attorney General of Iowa
1305 E. Walnut
Des Moines, IA 50319

CARLA J. STOVALL
Attorney General of Kansas
120 S.W. 10th Avenue
Topeka, KS 66612

MIKE MOORE
Attorney General of Mississippi
P.O. Box 220
Jackson, MS 39205

RICHARD P. IEYOUB
Attorney General of Louisiana
300 Capitol Drive
Baton Rouge, LA 70802

JEREMIAH W. (JAY) NIXON
Attorney General of Missouri
207 West High Street
Jefferson City, MO 65101

G. STEVEN ROWE
Attorney General of Maine
State House Station 6
Augusta, ME 04333

DON STENBERG
Attorney General of Nebraska
2115 State Capitol
Lincoln, NE 68509

J. JOSEPH CURRAN, JR.
Attorney General of Maryland
200 St. Paul Place
Baltimore, MD 21202

FRANKIE SUE DEL PAPA
Attorney General of Nevada
100 N. Carson Street
Carson City, NV 89701

THOMAS F. REILLY
Attorney General of Massachusetts
One Ashburton Place
Boston, MA 02108

PHILIP T. MCLAUGHLIN
Attorney General of New Hampshire
33 Capitol Street
Concord, NH 03301

JENNIFER M. GRANHOLM
Attorney General of Michigan
P.O. Box 30212
Lansing, MI 48909

DAVID SAMSON
Attorney General of New Jersey
25 Market Street
Trenton, NJ 08625

ELIOT SPITZER
Attorney General of New York
The Capitol
Albany, New York 12224

CHARLES M. CONDON
Attorney General of South Carolina
P.O. Box 11549
Columbia, SC 29211

BETTY D. MONTGOMERY
Attorney General of Ohio
30 E. Broad Street, 17th Floor
Columbus, OH 43215

MARK BARNETT
Attorney General of South Dakota
500 East Capitol Avenue
Pierre, SD 57501

W.A. DREW EDMONDSON
Attoney General of Oklahoma
2300 N. Lincoln Blvd.
Oklahoma City, OK 73105

PAUL G. SUMMERS
Attorney General of Tennessee
425 Fifth Avenue North
Nashville, TN 37243

HARDY MYERS
Attorney General of Oregon
1162 Court Street NE
Salem, OR 97310

JOHN CORNYN
Attorney General of Texas
P.O. Box 12548
Austin, TX 78711

ANABELLE RODRÍGUEZ
Attorney General of Puerto Rico
P.O. Box 9020192
San Juan, PR 00902

MARK L. SHURTLEFF
Attorney General of Utah
236 State Capitol
Salt Lake City, UT 84114

SHELDON WHITEHOUSE
Attorney General of Rhode Island
150 South Main Street
Providence, RI 02903

WILLIAM H. SORRELL
Attorney General of Vermont
109 State Street
Montpelier, VT 05609

JERRY W. KILGORE
Attorney General of Virginia
900 E. Main Street
Richmond, VA 23219

JAMES E. DOYLE
Attorney General of Wisconsin
P.O. Box 7857
Madison, WI 53707

IVER A. STRIDIRON
Attorney General of the Virgin Islands
48B-50C Kronprinsdens Gade
St. Thomas, VI 00802

HOKE MACMILLAN
Attorney General of Wyoming
123 State Capitol
Cheyenne, WY 82002

DARRELL V. MCGRAW, JR.
Attorney General of West Virginia
State Capitol, Room 26-E
Charleston, WV 25305

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTEREST OF THE *AMICI* 1

STATEMENT 2

ARGUMENT 8

I. THE ACT PERMITS STATES APPOINTED TO SERVE AS FOSTER CHILDREN'S REPRESENTATIVE PAYEES TO USE THE CHILDREN'S BENEFITS FOR THEIR CURRENT CARE WITHOUT VIOLATING 42 U.S.C. § 407(a). 8

II. ANY AMBIGUITY SHOULD BE RESOLVED IN FAVOR OF THE COMMISSIONER'S REASONABLE VIEW THAT AUTHORIZED EXPENDITURES BY REPRESENTATIVE PAYEES DO NOT VIOLATE 42 U.S.C. § 407(a). 14

CONCLUSION 17

TABLE OF AUTHORITIES

CASES

Auer v. Robbins, 519 U.S. 452 (1997) 15-16

Barnhart v. Sigmon Coal Co., 122 S. Ct. 941 (2002) 9

Bennett v. Arkansas, 485 U.S. 395 (1988) 10

Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984) 15

Circuit City Stores, Inc. v. Adams, 533 U.S. 105 (2001) ... 12

Davis v. Michigan Dept. of Treasury, 489 U.S. 803 (1989) 9

Department of Revenue of Oregon v. ACF Indus., Inc., 510 U.S. 332 (1994) 13

Holloway v. United States, 526 U.S. 1 (1999) 9

Jones v. United States, 527 U.S. 373 (1999) 9

Kawaauhua v. Geiger, 523 U.S. 57 (1998) 12

Pennsylvania Dept. of Public Welfare v. Davenport, 495 U.S. 552 (1990) 12

Philpott v. Essex County Welfare Bd., 409 U.S. 413 (1973) 9-11

Robinson v. Shell Oil Co., 519 U.S. 337 (1997) 9

TRW, Inc. v. Andrews, 122 S. Ct. 441 (2001) 12

United Sav. Assn. of Texas v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365 (1988) 12

STATUTES

Title II of the Social Security Act (42 U.S.C. § 401 *et seq.*) 3

42 U.S.C. § 405(j) 3, 11

42 U.S.C. § 405(j)(2)(C) 12

42 U.S.C. § 405(j)(3)(B) 6, 13, 15

42 U.S.C. § 407(a) ..... passim

Title XVI of the Social Security Act (42 U.S.C. § 1381 *et seq.*) 3

42 U.S.C. § 1383(a) 3, 11

42 U.S.C. § 1383(a)(2)(B) 3

42 U.S.C. § 1383(a)(2)(C)(i) 13

42 U.S.C. § 1383(a)(2)(C)(ii) 6, 15

42 U.S.C. § 1383(d)(1) 7

Fla. Stat. § 402.33 (2001) 2

REGULATIONS

20 C.F.R. § 404.2021 3

20 C.F.R. § 404.2035(a) 5, 8, 15

20 C.F.R. § 404.2040(a)(1) 5, 15

20 C.F.R. § 404.2040(b) 5

20 C.F.R. § 404.2040(d) 6

20 C.F.R. § 404.2045 6

20 C.F.R. § 416.1205(c) 5

20 C.F.R. § 416.610(b) 3

20 C.F.R. § 416.621 3

20 C.F.R. § 416.635(a) 5, 8, 15

20 C.F.R. § 416.640(a) 5, 15

20 C.F.R. § 416.640(b) 5

20 C.F.R. § 416.640(e) 6

20 C.F.R. § 416.645 6

INTEREST OF THE *AMICI*

The *amici* are States, along with the Commonwealth of Puerto Rico and the Territories of American Samoa and the Virgin Islands (the "*amici* States"), that care for abused, neglected, and abandoned children through foster care programs. Where foster children qualify for certain federal assistance under the Social Security Act, the *amici* States often serve as the children's representative payees and, like any parent who receives social security funds on a child's behalf, use portions of those federal funds to meet the costs of the children's current care.

The *amici* States – indeed, to our knowledge, *all* States – have acted in this manner for decades and with the full knowledge and support of the Social Security Administration. Nonetheless, in *Guardianship Estate of Keffeler v. State of Washington Department of Social and Health Services*, 32 P.3d 267 (Wash. 2001), the Supreme Court of Washington held that a State serving as a child's representative payee violates 42 U.S.C. § 407(a) when the State applies the child's social security funds towards the costs of the child's current care.

The *amici* States strongly disagree with the Washington court's decision, which misread the governing law and ignored that the conduct at issue is a nationwide practice long approved by the Social Security Administration. The Washington court also ignored the ways in which the States' actions benefit foster care children and the Social Security Administration.

To provide these perspectives in this highly significant case, which threatens all States with potential liability totaling *billions* of dollars, the *amici* States submit this brief to the Court. The *amici* States urge the Court to reverse the Washington court's decision and hold that States serving as children's representative payees do not violate § 407(a) when they apply the children's social security benefits to the costs of the children's current care.

STATEMENT

Unfortunately, not every child's home provides the loving, safe and nurturing environment that children require. Various forms of abuse, neglect or abandonment are the chief reasons that States take custody of children, but, whatever the reason, once a State takes such a step, it acts in a *parens patriae* capacity and attempts to meet the child's physical, emotional and developmental needs. Foster care is a general term that refers to programs through which States place children in homes other than their natural or adoptive parents' homes, where foster parents or other caregivers attempt to provide a nurturing, albeit substitute, home environment.

Foster care is intended to be a temporary arrangement. Wherever possible, States aim to reunify children with their legal parents. When that cannot be accomplished, States seek to place children with new parents through permanent adoption. Foster homes provide a temporary solution until one of these long-term goals can be met or the child reaches majority. Particular foster care placements may last weeks, months, or in some instances years, depending on the dynamics of the child-caregiver relationship and the availability of the foster home. Although not the ideal situation, over time, a foster child may reside in numerous homes, public or private, with numerous foster parents or other caregivers.

States often look to a child's legal parents to account for the child's foster care costs.[1] In many instances, however, if not most, no parent is both available and able to pay those costs. In such cases, States typically take it upon themselves to finance the sizeable costs associated with the foster care system, utilizing any available federal assistance.

---

[1] *See, e.g.*, Fla. Stat. § 402.33 (2001) (enabling state to assess foster care costs to natural parent or guardian).

On occasion, foster children are entitled to receive federal assistance under one or both of two programs offered through the Social Security Act (the Act). First, an unmarried child under age 18 may receive benefits under Title II of the Act, which provides workers with retirement, survivors, and disability insurance (RSDI benefits), if the child's parent is eligible to receive RSDI benefits or if the child is a surviving dependent of a deceased parent who was eligible for those benefits. 42 U.S.C. § 401 *et seq*. Second, a child who is disabled and meets certain income and resource limitations may receive benefits under Title XVI of the Act (SSI benefits). 42 U.S.C. § 1381 *et seq*. The fact that a child is in foster care is not directly relevant to the child's entitlement to RSDI or SSI benefits.

When the Social Security Administration (SSA), through its Commissioner, determines that a recipient may be best served by payment of RSDI or SSI benefits to a representative payee, the Act authorizes the Commissioner to appoint such a person. 42 U.S.C. §§ 405(j), 1383(a). SSA regulations promulgated by the Commissioner generally require that a representative payee be appointed whenever a recipient is under the age of 18. 20 C.F.R. § 416.610(b). This practice affords the Commissioner some assurance that a responsible adult will be accountable for a minor's benefits and will expend them in accordance with regulatory guidelines.

States are mindful of the possibility that children in foster care may qualify for social security benefits. To varying degrees, States investigate this possibility, and, where a child appears to qualify for RSDI or SSI benefits, States may complete the detailed application process on the child's behalf and apply to be the child's representative payee. The Commissioner regularly grants those applications and designates the appropriate state agency as the child's representative payee. *See* 42 U.S.C. § 405(j), 42 U.S.C. § 1383(a)(2)(B), and 20 C.F.R. §§ 404.2021, 416.621 (permitting institutions to serve as representative payees).

The *amici* States estimate that, at any given time, state agencies serve as representative payees for tens of thousands of foster children. The following chart provides general estimates of the current number of children in certain States' foster care programs, along with the number of those children for whom those States serve as representative payee for social security benefits, based upon information provided by the respective States:

State	Foster Children	State As Rep. Payee
Florida	24000	3894
Michigan	14098	1048
New Jersey	10812	280
Washington	10578	1411
Massachusetts	10538	1350
Tennessee	9801	854
Minnesota	8362	1208
Arizona	6000	198
South Carolina	4968	500
Louisiana	4500	800
Alaska	2337	228
Hawaii	2000	200

Also, based on communications undertaken in connection with this case, the *amici* States believe that *every* State serves as the representative payee for some percentage of its foster children.

States' service as representative payees for foster children is both logical and appropriate in several respects. Foster care children are generally considered a State's ward, and the State – not a foster parent – is deemed to be the child's legal custodian. The State's service as representative payee for a foster child is thus comparable to a natural parent's service on behalf of his or her custodial child. Also, unlike nearly every other person in the typical foster child's life, States are constantly present, adding an important measure of stability to their role as representative payees.

Furthermore, as a foster child's prospective or appointed representative payee, States supply valuable administrative resources to both the child and the SSA. Many State agencies expend considerable resources determining whether foster children may qualify for RSDI or SSI benefits and completing the many steps involved in applying for and securing those benefits. Where States are named representative payees, many more resources are devoted to managing the children's benefits, which includes ensuring that the funds are used in compliance with numerous federal regulations, accounting to the SSA for the use of the funds, and, in the case of SSI benefits, monitoring each child's resource levels to ensure that the child's eligibility is preserved. *See* 20 C.F.R. § 416.1205(c) (imposing $2000 maximum on certain non-exempt resources). Over the course of many years, the States have acquired tremendous expertise in the intricacies of service as a representative payee and established efficient working relationships with the Social Security Administration.

All representative payees are required to expend beneficiaries' social security funds in accordance with federal law. By regulation, a representative payee may use RSDI or SSI benefits "only for the use of the beneficiary in a manner and for the purposes he or she determines . . . to be in the best interests of the beneficiary." 20 C.F.R. §§ 404.2035(a), 416.635(a). The Commissioner has determined that benefits are expended for the use and benefit of the beneficiary "if they are used for the beneficiary's current maintenance" and that "current maintenance" includes "cost incurred in obtaining food, shelter, clothing, medical care, and personal comfort items." 20 C.F.R. §§ 404.2040(a)(1), 416.640(a). Institutional care costs are also authorized expenditures, 20 C.F.R. §§ 404.2040(b), 416.640(b), and while a representative payee is not required to use benefits to satisfy debts arising prior to the benefit's payment period, the representative payee is permitted to do so if the beneficiary's current and reasonably foreseeable needs are met. 20 C.F.R.

§ 404.2040(d). Where a child's current monthly benefits exceed the amount used by the representative payee in accordance with the SSA's regulations, the representative payee must conserve or invest the excess funds. 20 C.F.R. §§ 404.2045(a), (c), 416.645(a), (c); *cf.* 20 C.F.R. § 416.640(e) (separately providing for the use of certain large retroactive SSI payments).

Based on this regulatory scheme, States serving as representative payees for foster children have regularly expended portions of the children's benefits to pay costs associated with the children's current care: shelter, food, clothing, etc. Thus, for example, if a state social services agency that had been appointed a foster child's representative payee received the child's RSDI or SSI check for July 2002, then the agency might use portions of those funds to pay for foster care expenses incurred by the agency in July 2002. States have done this in the good faith belief that, like any parent who receives social security benefits as the representative payee for a child, controlling federal law permits at least part of those funds to be directed towards the children's current care.

Significantly, the *amici* States believe that, like Washington in this case, *every State* follows this practice to some degree. Furthermore, while the Commissioner is required to implement and has implemented monitoring procedures to oversee how institutional representative payees spend their beneficiaries' benefits, *see* 42 U.S.C. §§ 405(j)(3)(B), 1383(a)(2)(C)(ii), the *amici* States are aware of no SSA audit of any state foster care program that has ever questioned these routine expenditures. To the contrary, the SSA's positive reviews of this practice have long given the States every indication that these expenditures are lawful and appropriate.

Notwithstanding the Commissioner's regulations that expressly permit utilizing benefits for a beneficiary's current care costs, as well as the States' longstanding reliance on the Commissioner's approval of these expenditures, the Supreme Court of Washington declared this practice to be unlawful in the

case now before the Court. In the Washington court's view, the state agency responsible for Washington's foster care program violated 42 U.S.C. § 407(a) – the Act's so-called "anti-alienation" provision[2] – each time the agency used a foster child's social security benefits to pay costs associated with the child's current care. If that holding is affirmed, then, like Washington, *all States* may face claims to enjoin this practice and recover substantial monetary damages. In the case of States with large foster child populations, such as Florida, liability for this supposed misuse of federal benefits could amount to *hundreds of millions of dollars* for that State alone.[3] In all States, fundamental alterations would need to be made to long-approved practices regarding the administration of funds on behalf of foster care children.

---

[2] 42 U.S.C. § 407(a) provides:

> The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

This provision is directly applicable to RSDI benefits. It is made applicable to SSI benefits by 42 U.S.C. § 1383(d)(1).

[3] For instance, during fiscal year 2000-2001, Florida received approximately $12.7 million in social security payments for foster children for whom the State served as representative payee. Of that $12.7 million, approximately $8.4 million were used on behalf of the intended beneficiaries to pay for foster care expenses such as room and board. If, as in Washington, Florida were sued to recover all such expenditures during the past 19 years, the potential damages exposure could easily reach hundreds of millions of dollars.

The Washington court's decision is erroneous and should be reversed. As the *amici* States demonstrate in the following section, States that serve as representative payees for foster children do not violate § 407(a) when they utilize a foster child's benefits to pay for the child's current care.

ARGUMENT

In resolving the case below, the Supreme Court of Washington viewed the sole issue as whether the state foster care agency "acted as a creditor" when it used the children's social security benefits to pay for the children's current care. Pet. App., at A-19. That focus was wholly misplaced and caused the court to reach a result that is plainly inconsistent with the statutory scheme. Furthermore, to the extent that any ambiguity exists in that scheme, the Washington court should have deferred to the Commissioner's reasonable view that States may serve as foster children's representative payees and, as such, utilize the children's RSDI and SSI benefits to pay for their current care without violating 42 U.S.C. § 407(a). For these reasons, this Court should reverse the decision below.

I. THE ACT PERMITS STATES APPOINTED TO SERVE AS FOSTER CHILDREN'S REPRESENTATIVE PAYEES TO USE THE CHILDREN'S BENEFITS FOR THEIR CURRENT CARE WITHOUT VIOLATING 42 U.S.C. § 407(a).

As explained above, States routinely serve as representative payees for foster children, and States regularly use portions of the children's RSDI and SSI benefits to pay for their current care. In doing so, States do no more than perform the authorized function of the representative payee, which is to expend such funds for the "use and benefit" of the beneficiary. 20 C.F.R. §§ 404.2035, 416.635(a). The Supreme Court of

Washington's principal error was in failing to acknowledge that, regardless of whether the payee is acting "as a creditor," a representative payee's actions do not violate the anti-alienation provision found at § 407(a).

Statutory interpretation begins with the statute's text and an inquiry into whether the language has a plain and unambiguous meaning with regard to a particular dispute. *Barnhart v. Sigmon Coal Co.*, 122 S. Ct. 941, 950 (2002); *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997). The statute must not be viewed in isolation, however. The Court considers "'not only the bare meaning' of the critical word or phrase 'but also its placement and purpose in the statutory scheme.'" *Holloway v. United States*, 526 U.S. 1, 6 (1999) (*quoting Bailey v. United States*, 516 U.S. 137, 145 (1995)); *see also Jones v. United States*, 527 U.S. 373, 389 (1999) ("Statutory language must be read in context and a phrase 'gathers meaning from the words around it.'") (*quoting Jarecki v. G.D. Searle & Co.*, 367 U.S. 303, 307 (1961)); *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803, 809 (1989) ("It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.").

Section 407(a) states, in part, that "none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law." By its plain text, this language prohibits persons from alienating social security recipients from their benefits.

The Court has twice construed this provision, and in both cases the Court confirmed that the statute offers broad protection from creditors' efforts to attach social security benefits. In *Philpott v. Essex County Welfare Board*, 409 U.S. 413 (1973), the Court considered a New Jersey county's attempt to reach the assets of a bank account into which the petitioner's retroactive social security benefits had been paid. The county asserted that

had the retroactive payments been issued during the time periods for which they were paid, the county would have deducted the amount of those benefits from the petitioner's welfare payments. The Court held that § 407(a) plainly barred the county's action. The Court specifically rejected the argument that those who provide care and maintenance for social security recipients are not considered the recipient's creditors and are therefore outside the scope of § 407(a), noting "§ 407 does not refer to any 'claim of creditors'; it imposes a broad bar against the use of any legal process to reach all social security benefits." *Id.* at 417.

In *Bennett v. Arkansas*, 485 U.S. 395 (1988), the State of Arkansas attempted to attach a state prisoner's social security benefits to help satisfy the care and maintenance costs associated with his incarceration. Arkansas defended its actions by arguing that § 407 contains an implicit exception for those who provide for the care and maintenance of a social security recipient, but the Court refused to read such an exception into the statute's plain language and held that § 407 barred the attachment. *Id.* at 397-98.

The Supreme Court of Washington relied on *Philpott* and *Bennett*, and similar cases from other courts, when it held that § 407(a) places social security benefits "beyond the reach of the state, however clever or subtle its attempt to seize them." Pet. App., at A-23. There is a critical difference, however, between this case and the cases relied upon by the Washington court. In those cases, the state agencies used a coercive process to seize the recipients' benefits from the recipients, whereas, here, the state agency in charge of Washington's foster care system was appointed the foster children's representative payee, received the children's social security funds, and was authorized to dispose of them, in its discretion, for the children's "use and benefit."

The Washington court was aware of this distinction but found it to be of no moment. In that court's view, the state agency could "act like a creditor despite the fact it is a representative payee" and thereby violate § 407(a). Pet. App., at

A-26. This reading, which holds that a representative payee cannot pay itself with a beneficiary's funds any time the payee appears to be a beneficiary's creditor, ignores both the statute's language and its context and produces a result that is clearly at odds with the statutory scheme.

To begin, nothing in § 407(a) suggests that the statute's application should turn solely on whether one's actions may be seen as those of a creditor. As the Court noted in *Philpott*, the statute does not employ the term "creditor." The statute simply prohibits all efforts to alienate a recipient from his or her social security benefits.

A duly appointed representative payee, however, does not alienate a recipient from his or her benefits by expending a beneficiary's social security funds. To the contrary, the representative payee actually receives the money on the beneficiary's behalf and, in this sense, stands in the beneficiary's shoes, having been appointed by the Commissioner to manage the funds because the beneficiary's interests would be best served by that appointment. *See* 42 U.S.C. §§ 405(j), 1383(a). Just as the anti-alienation provision of § 407 should have no application to recipients who receive their social security benefits directly, that provision should have no application to representative payees who are appointed to receive benefits on beneficiaries' behalf.

Indeed, in the current case, neither respondents nor the Washington court appeared to contest that the Washington state agency could have been paid from the foster children's benefits had someone other than the agency been appointed the children's representative payee and chosen to make those payments. Assuming that a payment to the agency is appropriate under the numerous regulations that govern a representative payee's expenditures, it makes no sense to say that the payment violates § 407(a) if the payee is the agency but is entirely permissible if the payee is any other person. Nothing in § 407(a) suggests that it is intended to limit the discretion of representative payees.

This is made manifest by the fact that Act speaks directly to the possibility of creditors serving as representative payees. *See United Sav. Assn. of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 371 (1988) ("A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme . . . because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law."). In addition to numerous other restrictions on who may qualify as a representative payee, the Act generally prohibits creditors who supply a beneficiary with goods or services for consideration from being appointed as the beneficiary's payee. § 405(j)(2)(C)(i)(III). The Act expressly excepts certain creditors from this rule, including state-licensed care facilities and those who are a beneficiary's legal guardian or legal representative. § 405(j)(2)(C)(iii). The purpose of these provisions is to prevent most, though not all, traditional creditors from serving as representative payees, given the obvious potential for creditors to give their accounts with the beneficiary priority when deciding how to expend a beneficiary's benefits. Yet these provisions are entirely unnecessary, and are rendered wholly superfluous, if, as the Supreme Court of Washington held, § 407(a) stands as a blanket prohibition against any representative payee who so much as acts like a creditor from paying itself out of the beneficiary's funds. Creditors, as such, would pose no threat to beneficiaries' benefits, and Congress had no reason to address which creditors may potentially serve as representative payees and which may not. Statutory provisions should not be interpreted in a manner that renders other provisions superfluous. *E.g.*, *Pennsylvania Dept. of Public Welfare v. Davenport*, 495 U.S. 552, 562 (1990) ("Our cases express a deep reluctance to interpret a statutory provision so as to render superfluous other provisions in the same enactment."); *see also, e.g.*, *TRW, Inc. v. Andrews*, 122 S. Ct. 441, 448-49 (2001); *Circuit City Stores, Inc. v. Adams*, 533 U.S. 105, 113 (2001); *Kawaauhua v. Geiger*, 523 U.S. 57, 62 (1998).

This is further made clear by the Act's specific contemplation that state-licensed care facilities may serve as representative payees. As just mentioned, state-licensed care facilities are excepted from the general prohibition against the appointment of creditors who supply goods or services for consideration. If, as the Washington court held, a creditor appointed as a representative payee may never use any portion of the beneficiary's benefits to pay for current care supplied by the creditor, then Congress could only have expected that private care facilities that ordinarily expect consideration from patients would undertake the troubles of serving as patients' representative payees without being able to use any portion of the patients' benefits towards their current care. That is simply illogical. *See, e.g.*, *Department of Revenue of Oregon v. ACF Indus., Inc.*, 510 U.S. 332, 343 (1994) (rejecting an "illogical" reading of a statute).

The Act also makes specific references to state institutions as possible representative payees and requires the Commissioner to establish particular procedures to monitor the expenditures made by all such payees. 42 U.S.C. §§ 405(j)(3)(B), 1383(a)(2)(C)(i). The only principled reason for that requirement is that Congress intended state agencies, such as those that serve the States' foster children, to serve as representative payees for numerous beneficiaries and that monitoring such agencies' expenditures should be accomplished through special, efficient procedures designed to accommodate those payees. Here, too, it is unclear why Congress would expect any agency to serve in this capacity, particularly for numerous beneficiaries, if § 407(a) precluded the agency from using any benefits toward beneficiaries' current care.

This concern bears directly on the *amici* States and their foster care programs with respect to the question before the Court. Screening foster care children for RSDI or SSI eligibility, applying for benefits on the children's behalf, applying to be the children's representative payee, monitoring the expenditures for

each child, and accounting to the Commissioner during periodic audits of how children's funds have been expended are all administratively complex processes that require a substantial output of States' resources. If the Supreme Court of Washington's view of § 407(a) is affirmed, some States may have financial difficulty continuing these costly efforts with respect to foster care children.

When the Act is read as a whole, however, and the anti-alienation provision is viewed in the context of the representative payee's role, it is apparent that the Supreme Court of Washington erred in holding that the agency administering Washington's foster care program violated § 407(a) by utilizing beneficiaries' benefits to pay for their foster care costs. The agency was bound to observe the laws and regulations that specifically govern representative payees, but its expenditures did not and could not violate the anti-alienation provision found at § 407(a).

II. ANY AMBIGUITY SHOULD BE RESOLVED IN FAVOR OF THE COMMISSIONER'S REASONABLE VIEW THAT AUTHORIZED EXPENDITURES BY REPRESENTATIVE PAYEES DO NOT VIOLATE 42 U.S.C. § 407(a).

As the *amici* States demonstrated above, § 407(a) does not limit a representative payee's discretion to pay itself for expenses incurred in caring for a beneficiary. If, however, there is any ambiguity in the statutory scheme, the Court should defer to the Commissioner's reasonable view that authorized expenditures do not violate the anti-alienation provision found at § 407(a). The Supreme Court of Washington completely ignored the Commissioner's position, though she twice filed *amicus curiae* briefs in the Washington litigation to express her views.

Where a statute's language is ambiguous or open on a question, the Court generally defers to reasonable interpretations by the agency charged with the statute's execution. *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-45 (1984). Furthermore, an agency's interpretation of its own regulations is controlling unless it is "plainly erroneous or inconsistent with the regulation." *Auer v. Robbins*, 519 U.S. 452, 461 (1997) (quotation omitted).

Here, the Commissioner has interpreted § 407(a) not to prohibit representative payees from expending beneficiaries' benefits on their current care costs, even where the payees are state agencies and the costs are those incurred by the agencies in the care of foster children. These interpretations can be seen in three different forms. First, the Commissioner's regulations plainly provide that RSDI or SSI benefits used for a beneficiary's current maintenance are deemed to be utilized for the beneficiary's use and benefit. 20 C.F.R. §§ 404.2035(a), 404.2040(a)(1), 416.635(a), 416.640(a). No exception is made for situations where the care is provided by a representative payee.

Second, while the Commissioner is specifically obliged to monitor expenditures by institutional representative payees, 42 U.S.C. §§ 405(j)(3)(B), 1383 (a)(2)(C)(ii), and the Commissioner has long done so, the *amici* States are unaware of any instance where anyone at the SSA has utilized§ 407(a) to question, let alone disapprove, any of the countless instances where the States have applied foster children's RSDI or SSI benefits toward their foster care costs. As explained earlier in detail, the *amici* States (and, we believe, *all* States) have long followed this practice in full view of the SSA and never received any indication that they were violating the anti-alienation rule. To the contrary, the SSA has always found the *amici* States to be in compliance with federal law with regard to this aspect of their expenditures.

Third, the Commissioner filed two *amicus curiae* briefs in the Washington litigation in support of the Washington state

agency's practices. Such briefs are a legitimate means of expressing agency policy, *Auer*, 419 U.S. at 461, yet, in its decision, the Washington Supreme Court made no mention of these briefs or the Commissioner's position.

Notwithstanding the Washington court's unwillingness to address the Commissioner's views, her position regarding the application of § 407(a) to representative payees is clear: a state agency serving as a foster child's representative payee does not violate § 407(a) by expending RSDI or SSI benefits to pay for the child's current care. This view is also entirely reasonable, as it harmonizes the anti-alienation provision with the functions of representative payees and gives meaning to the Act's provisions that limit the types of creditors that may serve as representative payees.

In sum, to whatever extent the Act can be viewed as ambiguous regarding the application of § 407(a) to representative payees, the Commissioner's interpretation of the Act is reasonable and entitled to deference. Because that interpretation is inconsistent with the Supreme Court of Washington's decision below, that decision should be reversed.

CONCLUSION

For all of the foregoing reasons, a state agency serving as a foster child's representative payee does not violate 42 U.S.C. § 407(a) by utilizing the child's benefits to pay costs associated with the child's current care. The Supreme Court of Washington erred in holding to the contrary, and this Court should reverse that decision.

Respectfully submitted,

ROBERT A. BUTTERWORTH
Attorney General of Florida

THOMAS E. WARNER
Solicitor General of Florida
Counsel of Record

MATTHEW J. CONIGLIARO
Deputy Solicitor General

Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399-1050
(850) 414-3681

No. 01-1420

Supreme Court U.S.
FILED
AUG 2 2002
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, *et al.*,
Petitioners,

v.

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, GUARDIAN, and other persons similarly situated,
Respondents.

On Writ of Certiorari to the Supreme Court of Washington

BRIEF OF CHILDREN'S DEFENSE FUND, CATHOLIC CHARITIES USA, CHILD WELFARE LEAGUE OF AMERICA, AND ALLIANCE FOR CHILDREN AND FAMILIES AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

MICHAEL L. MARTINEZ *
DAVID L. HAGA
BRIDGET K. ALLISON
CROWELL & MORING LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 624-2500

Attorneys for Children's Defense Fund, Catholic Charities USA, Child Welfare League of America, and Alliance for Children and Families

* Counsel of Record

August 2, 2002

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

BEST AVAILABLE COPY

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
INTEREST OF *AMICI CURIAE*	1
STATEMENT OF THE CASE	4
SUMMARY OF ARGUMENT	8
ARGUMENT	9
I. THE WASHINGTON SUPREME COURT'S DECISION SHOULD BE REVERSED BECAUSE THE STATE COURT MISAPPLIED GOVERNING FEDERAL LAW	9
A. DSHS's Use of Social Security Benefits Comports with the Requirements of the Social Security Act and Implementing Regulations	10
B. The Act's Anti-Attachment Provision Simply Does Not Apply to DSHS's Practice	12
C. The State Court's Decision Discriminates against Agencies Serving as Representative Payees	14
D. Other Federal and State Courts Have Endorsed the Practice Followed by DSHS	15
II. THE WASHINGTON SUPREME COURT'S DECISION FAILS TO AFFORD DUE DEFERENCE TO THE FEDERAL AGENCY CHARGED WITH INTERPRETING AND ENFORCING THE ACT	16

TABLE OF CONTENTS—Continued

	Page
A. The State Court Decision on a Question of Federal Law Conflicts with the Interpretation of the Federal Agency Charged with Implementing the Law	16
B. The Commissioner Is Well-Equipped to Ensure Continuing Compliance with the Act and Implementing Regulations	18
III. THE STATE COURT DECISION MAY PROFOUNDLY AND ADVERSELY IMPACT THE AVAILABILITY AND USE OF SOCIAL SECURITY BENEFITS FOR NEEDY CHILDREN NATIONWIDE	20
CONCLUSION	24

TABLE OF AUTHORITIES

CASES

	Page
Auer v. Robbins, 519 U.S. 452 (1997)	17
Bennett v. Arkansas, 485 U.S. 395 (1988)	15
Brinkman v. Rahm, 878 F.2d 263 (9th Cir. 1989)	15
C.G.A. v. Alaska, 824 P.2d 1364 (Alaska 1992)	15
Chevron U.S.A., Inc. v. Natural Resources Defense Counsel, Inc., 467 U.S. 837 (1984)	17
Crawford v. Gould, 56 F.3d 1162 (9th Cir. 1995)	15
King v. Schafer, 940 F.2d 1182 (8th Cir. 1991)	11, 15
In re the Guardianship of Nelson, 547 N.W.2d 105 (Minn. Ct. App. 1996)	15
Mason v. Sybinski, 280 F.3d 788 (7th Cir. 2002)	11, 15
Mellies v. Mellies, 815 P.2d 114 (Kan. 1991)	15
Philpott v. Essex County Welfare Bd., 409 U.S. 413 (1973)	15
United Food and Chemical Workers Union Local 751 v. Brown Group, Inc., 517 U.S. 544 (1996)	11

STATUTES

Wash. Rev. Code § 13.34.130(2)	5
20 C.F.R. § 404.2010(b)	6
20 C.F.R. § 404.2021(b)	6, 18, 21
20 C.F.R. § 404.2035	10, 14
20 C.F.R. § 404.2040(a)(1)	10
20 C.F.R. § 404.2040(d)	12, 13, 14
20 C.F.R. § 404.2045	10
20 C.F.R. § 416.02	5
20 C.F.R. § 416.610(b)	6
20 C.F.R. § 416.621(b)	6, 18
20 C.F.R. § 416.635(a)	10, 14
20 C.F.R. § 416.640(a)	10

TABLE OF AUTHORITIES—Continued

	Page
20 C.F.R. § 416.645	10
20 C.F.R. § 416.1205(c)	5-6, 20
42 U.S.C. § 401	5
42 U.S.C. § 405(j)(1)(A)	6
42 U.S.C. § 405(j)(2)(A)	18
42 U.S.C. § 405(j)(2)(C)	13
42 U.S.C. § 405(j)(2)(C)(i)(III)	13
42 U.S.C. § 405(j)(2)(C)(iii)(V)	13, 14
42 U.S.C. § 405(j)(2)(E)(ii)	18
42 U.S.C. § 405(j)(3)(B) and (D)	19
42 U.S.C. § 407(a)	6, 11, 12
42 U.S.C. § 1381	5
42 U.S.C. § 1382-1382d	5, 20
42 U.S.C. § 1383(a)(2)(A)(ii)(I)	6
42 U.S.C. § 1383(a)(2)(A)(iii)	6
42 U.S.C. § 1383(a)(2)(B)(i)	18
42 U.S.C. § 1383(a)(2)(B)(xi)-(xiii)	18
42 U.S.C. § 1383(a)(2)(C)(ii) and (iv)	19

IN THE

Supreme Court of the United States

No. 01-1420

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, *et al.*,
Petitioners,

v.

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, GUARDIAN, and other persons similarly situated,
Respondents.

On Writ of Certiorari to the Supreme Court of Washington

BRIEF OF CHILDREN'S DEFENSE FUND, CATHOLIC CHARITIES USA, CHILD WELFARE LEAGUE OF AMERICA, AND ALLIANCE FOR CHILDREN AND FAMILIES AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

INTEREST OF *AMICI CURIAE* [1]

As set forth in their earlier brief as *amici curiae* in support of the petition for a writ of certiorari, a*mici curiae* Children's Defense Fund, Catholic Charities USA, Child Welfare League of America, and Alliance for Children and Families (collectively, "*amici*") are national, non-profit organizations dedicated to, among other things, identifying and addressing

[1] No counsel for any party had any role in authoring this brief, and no person other than the named *amici* and their counsel made any monetary contribution to its preparation and submission.

issues impacting children in the United States—including children with special needs and/or disabilities who are in foster care and are eligible for benefits from the Social Security Administration.[2]

For thirty years, the Children's Defense Fund ("CDF") has been advocating to ensure every child in America a Healthy Start, a Head Start, a Fair Start, a Safe Start, and a Moral Start in life and a successful passage to adulthood with the help of caring families and communities. CDF pays particular attention to the needs of poor and minority children and those with disabilities, including children who have been abused and/or neglected and, as a result, sometimes end up in the public foster care system. In its advocacy for children, CDF has seen first-hand the vital role that the federal Supplemental Security Income ("SSI") Program plays in securing the futures of children with a wide range of physical, emotional, and mental disabilities.

Since 1727, Catholic Charities USA ("Catholic Charities") has operated one of the nation's largest, private networks of independent social service agencies and volunteers dedicated to reducing poverty, supporting families, and building communities in the United States. Today, more than 1,400 local Catholic Charities agencies with more than 300,000 staff members and volunteers serve nearly 10 million people in need each year. Many of these Catholic Charities agencies provide direct services to children in the foster care system, including nearly 20,000 children in 1999 alone. In addition, Catholic Charities agencies facilitate the adoption of children in foster care and others, completing 4,384 adoptions in 1999, 60% of which were for children with special needs.

---

[2] Counsel for both petitioners and respondents have consented to the filing of this Brief. Pursuant to Sup. Ct. R. 37.3(a), *amici* have filed letters stating such consent with the Clerk of the Court.

The Child Welfare League of America ("CWLA") is an 82-year-old association of nearly 1,200 public and private child and family-serving organizations. Its member agencies collectively serve more than 3 million abused, neglected, and vulnerable children and families every year. CWLA has long been involved in the development of quality programs, practices and policies in all areas of child welfare, including the provision of services to children in foster care. Virtually all of CWLA's 50 state and approximately 150 local public child welfare agencies serve as representative payees for children eligible for SSI benefits. Other CWLA members, including non-profit direct child care agencies, on occasion also may serve as representative payees.

The Alliance for Children and Families ("Alliance") is a nonprofit membership association representing more than 350 child- and family-serving organizations across the U.S. and Canada. Alliance members serve more than 5 million individuals each year in more than 2,000 communities, including advocacy on behalf of neglected and abused children. Alliance members provide a vast array of services covering foster family care, residential care, adoption and family preservation.

Amici CDF, Catholic Charities, CWLA, and Alliance submit that the Washington State Supreme Court decision at issue before this Court could have a profound national impact upon the low income and special needs children for whom they advocate. Regardless of its potential impact on the roles that three of these organizations play as representative payees, *amici*'s interest in this case evolves more broadly from their long history of advocacy on behalf of children in the child welfare system and a particular commitment to the needs of children with disabilities. *Amici* believe that the Washington Supreme Court's decision on this important issue of federal law will eliminate the representative payee of last resort for thousands of American children with disabilities in

the public foster care system, thereby inevitably depriving these children of important attention to their disabilities, as well as SSI and other key supports essential to their well-being and healthy development. Because *amici* devote significant efforts to nationwide advocacy on behalf of children with disabilities and others in need of special support, the Washington Supreme Court decision will present new challenges to *amici* in their efforts on behalf of these children. *Amici* therefore file this brief urging reversal of the Washington Supreme Court's decision because that holding not only runs counter to the governing federal law, but has potentially profound national public policy implications that could adversely impact the children for whom they advocate.

STATEMENT OF THE CASE

What began as a discrete dispute regarding a long-since abandoned effort by an employee of the Washington Department of Social and Health Services ("DSHS") to remove one child's grandmother as his representative payee for receipt of the child's Social Security benefits (the only time DSHS alleges that an employee has ever tried to remove a private representative payee) has since transformed into a class-wide decision by the Washington Supreme Court standing contrary to federal law and invalidating a federal policy endorsed by the Social Security Administration ("SSA") and followed by every State in some form. Despite its beginnings, this case has produced a decision of such potentially profound national impact that, in addition to the *amici* on this brief, the U.S. Solicitor General and the Attorneys General for 26 states and the Commonwealth of Puerto Rico all have filed briefs with this Court in support of Petitioners' efforts to seek reversal. The national issue before the Court relates to the manner in which state agencies such as DSHS, acting as representative payees for Social Security benefits for children in foster care,

utilize those benefits to pay for the children's current care, maintenance, and special needs, consistent with their best interests.

In the State of Washington, dependent children who have been abandoned, neglected or abused or who have no parent, guardian, or other custodian capable of adequately caring for them are placed in foster care under the care and custody of DSHS. While placement of the child with a relative is the preferred option under Washington law (Wash. Rev. Code § 13.34.130(2)), DSHS will assume responsibility for a child's care when there is no suitable relative willing and/or able to provide appropriate nurturing and care.[3] A number of the children receiving foster care in Washington are eligible for one or both of two types of benefits under the Social Security Act: (1) SSI benefits under Title XVI of the Social Security Act, 42 U.S.C. §§ 1381, *et seq.*, for children who are blind or disabled and who do not have sufficient income or resources to maintain a minimum standard of living; and (2) benefits for unmarried minor children who were dependent upon a wage earner entitled to retirement benefits under Title II of the Act and whose support has now been lost, due to the wage earner's death or disability. *See* 42 U.S.C. §§ 401, *et seq.*[4] To qualify for SSI benefits, the child must not only establish a disability, but must meet certain income and resource limits. *See* 42 U.S.C. § 1382-1382d; 20 C.F.R. § 416.02. Unlike a Title II beneficiary, a child receiving SSI may lose her benefit eligibility if she accrues resources above a certain minimal level, currently $2,000. 20 C.F.R.

---

[3] As of September 1999, there were 10,578 foster children in the care of DSHS. *See* Appendix to Petition for a Writ of Certiorari (hereinafter "App.") at 49, ¶ 3.

[4] Of the 10,578 foster children in foster care in Washington in September 1999, approximately 923 children received SSI benefits under Title XVI, 469 children received Title II benefits, and 88 children received both. App. at 49, ¶¶ 6-7.

§ 416.1205(c). Accordingly, in order to maintain eligibility, the SSI recipient's resources must be carefully monitored and administered to stay within the recognized federal limits.

In the case of minor children, such as those in Washington's foster care system who are eligible for SSI or Title II benefits, the federal Commissioner of Social Security ("Commissioner") will appoint a representative payee to receive and administer Title II and/or SSI benefits on behalf of each child. 20 C.F.R. §§ 404.2010(b); 416.610(b). Under federal law, the Commissioner is authorized to designate a representative payee only where it would serve the "best interests" of the beneficiary. 42 U.S.C. §§ 405(j)(1)(A); 1383(a)(2)(A)(ii)(I). Just as with Washington's state foster care provisions, federal Social Security regulations provide that the appointed representative payee should be a parent, step-parent, relative or close friend, if possible, but that—as a matter of last resort—the Commissioner may appoint an authorized social service agency, such as DSHS. 20 C.F.R. §§ 404.2021(b); 416.621(b).

Following the appointment of a representative payee, the Social Security Act (the "Act") and its implementing regulations contain a number of provisions imposing continuing Commissioner oversight on the appointed payee, who is to be evaluated in accordance with a host of requirements designed to ensure that the benefits are used for current care expenses in the child's best interests. Among the Act's protections is an anti-attachment provision that discourages creditors from employing legal process (such as garnishment or attachment) to require representative payees to use the benefits to pay the past debts of the beneficiary. 42 U.S.C. § 407(a). If the Commissioner determines that the payee has misused benefits by improperly using them to pay creditors for past debts (or some other misuse), federal law requires that the Commissioner promptly terminate payment of benefits to the payee and certify payment to an alternative payee. 42 U.S.C §§ 405(j)(1)(A); 1383 (a)(2)(A)(iii).

In this case, in accordance with the foregoing procedures, the Commissioner appointed DSHS to be the representative payee for the children in the Respondent class, each of whom receives (or received) foster care from the State of Washington and is (or was) eligible to receive SSI and/or Title II benefits. App. at 7-13. Following its appointment as representative payee, DSHS began receiving payments from the SSA on behalf of the minor beneficiaries in its care and used those funds to pay for the costs of current maintenance for the children. *Id.* Included among the costs of current maintenance were certain foster care expenses. In other words, DSHS would reimburse itself for foster care provided to beneficiaries from the Title II and SSI benefits those beneficiaries received, and place any remaining money in interest bearing accounts. *Id.* It is undisputed that all of these "reimbursed" foster care expenses consist of costs for current maintenance and are spent on the beneficiaries. *Id.*

The Commissioner, pursuant to his ongoing review and oversight responsibilities, has reviewed and approved DSHS's administration of Social Security benefits, including specifically DSHS's policy of applying SSI and Title II benefits to foster care expenses. In August 1998, the SSA conducted an audit of DSHS and found no defects in its performance as a representative payee. *See* Brief for the United States as Amicus Curiae in the Supreme Court of the United States (Petition stage) at 7. To the contrary, the SSA determined that DSHS's administration of benefits was exemplary, concluding that DSHS "is a model agency that could stand as a prototype for effective organizational payeeship." App. at 78.

Nevertheless, Respondents instituted the present suit in 1996 alleging that DSHS's administration of Social Security benefits violated federal law. In particular, Respondents alleged that DSHS's use of benefits to pay a portion of the costs of foster care for the beneficiaries—even though such

funds are expended solely for the current maintenance of the beneficiaries—violates the anti-attachment provision of the Act, 42 U.S.C. § 407(a).

Following class certification on behalf of all past, present and future foster children in Washington who receive SSI or Title II benefits for whom DSHS acts or has sought to act as representative payee, the Okanogan County Superior Court entered summary judgment in favor of the Respondents. Petitioners appealed to the Washington Court of Appeals, which certified the case to the Washington Supreme Court. According to the five-justice majority of the Washington Supreme Court, the "critical question" before it was whether DSHS "acts as a creditor . . . when it reimburses itself for foster care costs out of the foster children's benefits." App. at 19-20. Following two oral arguments and a remand to the trial court for additional fact-finding, the Court concluded that DSHS does act as a creditor in violation of the Social Security Act and therefore affirmed the trial court's decision. Petitioners timely filed a Petition for a Writ of Certiorari ("Petition") seeking review of that decision with this Court. The Petition was granted on May 28, 2002.

The question now before this Court is whether, under federal law, DSHS—in its role as representative payee for foster children eligible to receive SSI and Title II benefits—properly may use those benefits to pay for the current care and maintenance of the beneficiaries, including devoting a portion of the benefits to pay for foster care expenses for those children.

SUMMARY OF ARGUMENT

The Court should reverse the decision of the Washington Supreme Court and hold that federal law permits a state agency acting as representative payee on behalf of a foster child eligible to receive SSI and/or Title II benefits to use those benefits to pay for the current care and maintenance of

the child, including devoting a portion of the benefits to pay for foster care expenses for the children. This holding would: (1) comport with the governing federal law, as recognized by the courts from other jurisdictions who have addressed this issue; (2) correspond with the interpretation reached by the federal agency charged with interpreting and implementing the federal law in question; and (3) remedy the national public policy concerns raised by the Washington Supreme Court's decision.

ARGUMENT

I. THE WASHINGTON SUPREME COURT'S DECISION SHOULD BE REVERSED BECAUSE THE STATE COURT MISAPPLIED GOVERNING FEDERAL LAW.

This case revolves on questions of interpretation of federal law. Chief among these questions are whether DSHS has (1) complied with the Act's requirements that the representative payee utilize the child's Social Security benefits on current care and maintenance and/or (2) acted as a creditor and used legal process to secure the child's benefits to pay past debts owed by the child in violation of the Act's anti-attachment provision. As is evident from the plain language of the governing statutes and regulations, DSHS's practice fully complied with the applicable federal law. Therefore, not surprisingly, the other federal and state courts to address this issue all agree on the validity of this practice in general, and, indeed, the Commissioner specifically approved the practice by DSHS in this particular case. Accordingly, the Court should reverse the decision of the Washington Supreme Court on this important question of federal law.

A. DSHS's Use of Social Security Benefits Comports with the Requirements of the Social Security Act and Implementing Regulations.

The Social Security Act and its implementing regulations make plain that a representative payee should expend a child's benefits "only for the use and benefit of the beneficiary in a manner . . . in the best interests of the beneficiary." 20 C.F.R. §§ 404.2035; 416.635(a). The regulations, in turn, provide that the benefits are used in the child's best interests "if they are used for the beneficiary's current maintenance," which expressly includes the "cost incurred in obtaining food, shelter, clothing, medical care, and personal comfort items," with any remaining amount conserved or invested. 20 C.F.R. §§ 404.2040(a)(1); 404.2045; 416.640(a); 416.645.

Here, Respondents do not contest DSHS's ability to serve as a representative payee. Likewise, it is undisputed that the foster care expenses were spent on or for the beneficiaries, with remaining amounts placed in interest-bearing accounts. App. at 11-13. It is also undisputed that these expenses included precisely the same types of costs (*i.e.*, food, clothing, shelter, and other needs) that the governing federal regulations authorize and recognize as being in the best interests of the beneficiary. *Id.* Indeed, after having conducted an audit of DSHS in August 1998, the Commissioner has concluded that DSHS's use of SSI and Title II funds to pay for foster care expenses is in the beneficiaries' "best interests" and fully complies with representative payee portions of the Act and corresponding regulations. *See* Brief for the Amicus Curiae Kenneth Apfel, Comm'r of the U.S. Social Security Admin., in the Supreme Court of Washington ("Commissioner's Br.") at 12, 15.

Nevertheless, Respondents contend (and the Washington Supreme Court held) that, in its capacity as representative payee, DSHS cannot use Social Security benefits to pay for

foster care expenses for the Social Security beneficiary because—regardless of whether it complies with the representative payee terms of the Act—such practice violates the Act's anti-attachment provision, 42 U.S.C. § 407(a). *See* App. at 30. This contention entirely misses the mark. Far from being irrelevant, DSHS's compliance with the representative payee provisions is dispositive of the issues before the Court. That is, because DSHS's actions comply with the Social Security Act's representative payee provision and regulations, those same actions cannot then be construed simultaneously to violate the anti-attachment portion of the Act.

All of the Act's provisions must be read together and as parts of a whole. *See United Food and Chemical Workers Union Local 751 v. Brown Group, Inc.*, 517 U.S. 544, 549-550 (1996). Pursuant to this fundamental rule of statutory construction, Section 407(a)'s prohibition on "creditors" using "legal process" to obtain benefits cannot outlaw actions condoned (if not required) by § 405(j)'s treatment of representative payees. "Section 407(a) was not intended to outlaw a procedure expressly authorized by the Social Security Administration's own regulations." *King v. Schafer*, 940 F.2d 1182, 1185 (8th Cir. 1991). To hold otherwise would render a portion of the Act meaningless. Accordingly, if DSHS's use of SSI and Title II benefits for current maintenance (such as foster care) complies with § 405(j) and the corresponding regulations (and it does), that same practice cannot then violate § 407(a). *Id.*; *Mason v. Sybinski*, 280 F.3d 788, 792-93 (7th Cir. 2002) (a "representative payee's responsible management of a Social Security recipient's benefits cannot amount to" a violation of § 407(a)). For this reason alone, the Washington Supreme Court's holding cannot stand.

B. The Act's Anti-Attachment Provision Simply Does Not Apply to DSHS's Practice.

Even when read on its own and without reference to DSHS's compliance with the Act's representative payee terms, the anti-attachment provision simply does not apply to DSHS's conduct here. Accordingly, the Washington Supreme Court's decision should be reversed.

Section 407(a) is designed to impede creditors who would employ legal process to acquire a portion of a beneficiary's benefits in order to pay the past debts of the beneficiary. Specifically, the section provides that future benefits payments are not "transferable or assignable" and are not subject to "execution, levy, attachment, garnishment, or other legal process." 42 U.S.C. § 407(a). Here, however, DSHS's use of benefits to pay for foster care expenses is neither an assignment of future payments, nor an execution, levy, attachment, garnishment or other legal process. Rather, it is the use of present funds, received by DSHS in accordance with the terms of the Act, to pay for current expenses and does not require DSHS to resort to garnishment, attachment or any such legal process. As such, by its own terms, § 407(a) simply cannot apply.

Moreover, while § 407(a) makes clear that the representative payee "may not be *required* to use benefit payments to satisfy a debt of the beneficiary," it is *permissible* for a payee to satisfy such a debt "if the current and reasonably foreseeable needs of the beneficiary are met." 20 C.F.R. 404.2040(d). Indeed, the Act does not even prohibit a creditor of the child from serving as representative payee in all instances. *See* App. at 33 (concurring in part, dissenting in part) ("The Social Security Act . . . does not rule out appointment of a creditor as representative payee in all situations."). Thus, the Washington Supreme Court was far too broad in its conclusion that, "[i]f DSHS's reimbursement scheme is that of a creditor, the anti-attachment provisions of

§ 407(a) apply and DSHS's cost recovery policy runs afoul of a federal statute which preempts state law." App. at 20. To the contrary, even if DSHS could be characterized as a creditor, and even if the beneficiary's benefits were employed to satisfy his past debts (both dubious assumptions), the anti-attachment provisions nevertheless would permit DSHS to act as the representative payee and to use the funds in this manner so long as the Commissioner deems DSHS "acceptable to serve" and so long as the "current and reasonably foreseeable needs of the beneficiary are met." 42 U.S.C. § 405(j)(2)(C)(iii)(V); 20 C.F.R. 404.2040(d). As noted above, the Commissioner has evaluated DSHS's performance as representative payee and concluded that DSHS is acceptable to serve as payee and that the beneficiary children's needs are being met. Accordingly, even when DSHS is viewed as a creditor, its practice does not run afoul of the anti-attachment provision.

Importantly, this reading of the anti-attachment provisions is unlikely to open any loopholes for creditors seeking to prey upon Social Security beneficiaries in foster care. In particular, this reading would do nothing to increase the chances of: (1) a creditor being appointed to serve as representative payee (and thereby gain access to the beneficiary's funds); or (2) a non-payee creditor acquiring a portion of the child's benefits. While, as noted above, the Act does not absolutely preclude appointment of a creditor as representative payee in all instances, it does so in the vast majority of cases. *See* 42 U.S.C. § 405(j)(2)(C). The Act certainly prohibits the appointment of a creditor who provides the beneficiary "with goods and services for consideration"—a bar inapplicable to DSHS, but well-suited to screen out most, if not all, potential creditors. 42 U.S.C. § 405(j)(2)(C)(i)(III). If a creditor cannot gain appointment as a payee, the creditor is unable to access the beneficiary's funds unless the creditor resorts to a form of legal process expressly prohibited by 42 U.S.C. § 407(a).

Moreover, even if a creditor is selected to serve as representative payee, as outlined above, the child's benefits still cannot be expended to pay past debts unless the Commissioner deems the creditor "acceptable to serve," the "current and reasonably foreseeable needs of the beneficiary are met," and the child's "best interests" are protected. 42 U.S.C. § 405(j)(2)(C)(iii)(V); 20 C.F.R. 404.2040(d); 20 C.F.R. §§ 404.2035; 416.635(a). Thus, approval of DSHS's appointment and practices in this case would not permit third-party creditors to seize a child's benefits at the expense of the child's special needs and interests.

C. The State Court's Decision Discriminates against Agencies Serving as Representative Payees.

The Washington Supreme Court's decision not only fails to comport with the relevant statutory language, but its interpretation of the Act also would have the illogical result of simultaneously *requiring* all non-agency representative payees to use SSI and Title II benefits to pay for the costs of a child's current care while *preventing* agency payees from using the benefits to pay for an entire category of current maintenance (*i.e.*, foster care). Under the Washington Supreme Court's decision, DSHS—by virtue of its status as a state agency—finds itself far more restricted in how it may spend Social Security benefits on the beneficiaries' behalf than any other payee would be. This conclusion is not only contrary to the governing statutes and regulations, but also contrary to logic. There is no reason to treat a state agency acting as a representative payee differently (or, indeed, worse) than any other representative payee. Where, as here, a representative payee uses Social Security benefits to pay for current maintenance—whether that payee is a state agency or private individual—such conduct complies with governing federal law.

D. Other Federal and State Courts Have Endorsed the Practice Followed by DSHS.

Based on the foregoing, it is not surprising that the other federal and state courts to address this issue have concluded that the practice followed by DSHS in this case fully comports with the Act and its regulations. *See Mason*, 280 F.3d at 792 (holding that a representative payee's decision to apply benefits to the recipient's cost of care does not violate § 407(a) "even when the payee is the state itself"); *King*, 940 F.2d at 1185 (holding that Section 407(a) does not bar a State from using benefits to pay for maintenance of children under its care); *C.G.A. v. Alaska*, 824 P.2d 1364, 1369 n.14 (Alaska 1992) (holding that the state may act as representative payee and "could legitimately apply [the child's] benefits toward foster care"). In addition, as Petitioners note, the Washington Supreme Court decision appears to be in substantial tension with the caselaw of Kansas and Minnesota, as well. *See* Petition at 20-21 (citing *Mellies v. Mellies*, 815 P.2d 114 (Kan. 1991) and *In re the Guardianship of Nelson*, 547 N.W.2d 105 (Minn. Ct. App. 1996)). The reasoning of these cases is sound, and compels a different result than that reached by the Washington Supreme Court.

Indeed, the Washington Supreme Court was unable to cite to any prior decision on point that supported its holding. The four cases relied upon by the state court present entirely different factual scenarios and are imminently distinguishable from the case at bar. *See Philpott v. Essex County Welfare Bd.*, 409 U.S. 413 (1973); *Bennett v. Arkansas*, 485 U.S. 395 (1988); *Brinkman v. Rahm*, 878 F.2d 263 (9th Cir. 1989); *Crawford v. Gould*, 56 F.3d 1162 (9th Cir. 1995). None of these cases involved the expenditure of Social Security benefits by a state agency acting as a representative payee. To the contrary, the class certified in *Brinkman* specifically excluded persons for whom the state served as representative payee. *Brinkman*, 878 F.2d at 264.

Accordingly, the more relevant authority is that of *Mason*, *King*, and *C.G.A.* In circumstances similar to those presented here, those courts apparently concluded, as this Court should, that federal law permits a state agency acting as representative payee on behalf of a foster child for SSI and/or Title II benefits to use those benefits to pay for the current care and maintenance of the child, including devoting a portion of the benefits to pay for foster care expenses for the children.

II. THE WASHINGTON SUPREME COURT'S DECISION FAILS TO AFFORD DUE DEFERENCE TO THE FEDERAL AGENCY CHARGED WITH INTERPRETING AND ENFORCING THE ACT.

The question presented to this Court is one of federal law. In particular, this case requires interpretation and application of the federal Social Security Act and its implementing federal regulations. The Commissioner of the Social Security Administration is tasked with the day-to-day interpretation and administration of these provisions of federal law and, as this Court has observed, the Commissioner's opinions regarding the application of the Act are entitled to due deference. However, in rendering its decision, the Washington Supreme Court disregarded the Commissioner's interpretation of the relevant law as it applies to this case and ignored the Commissioner's unique ability to ensure ongoing compliance with federal law by DSHS and similarly situated payees. The Washington Supreme Court's ruling therefore cannot be sustained.

A. The State Court Decision on a Question of Federal Law Conflicts with the Interpretation of the Federal Agency Charged with Implementing the Law.

At bottom, the Washington Supreme Court's holding was that the anti-attachment provision of a federal statute,

implemented by the Commissioner, prohibits DSHS from using beneficiaries' Social Security benefits to pay for a portion of the foster care DSHS provides to those beneficiaries. App. at 30-31. However, the Commissioner expressly has stated on multiple occasions *in this very case* (and otherwise) that a State acting as representative payee may offset the costs associated with the provision of foster care against the SSI and Title II social security benefits that a child in foster care receives. *See, e.g.*, Commissioner's Br. at 10-11. Thus, the state court effectively would substitute its judgment for that of the Commissioner with respect to this issue of federal law, a result squarely at odds with the well-established principle, announced by this Court, that the Commissioner's construction of the Act and its corresponding regulations is entitled to substantial deference. *Auer v. Robbins*, 519 U.S. 452, 457-457 (1997) (quoting *Chevron U.S.A., Inc. v. Natural Resources Defense Counsel, Inc.*, 467 U.S. 837, 842-43 (1984)).

Significantly, the Commissioner's construction of the Act and implementing regulations here is not merely an abstract reading of the governing provisions as they might apply in a vacuum; rather, it is the result of careful review and scrutiny of the specific DSHS practices at issue before the Court. In August 1998, after Respondents initiated the present suit, the Commissioner conducted an audit of DSHS's performance as representative payee, including an examination of DSHS's practice of applying Social Security benefits to pay for foster care expenses. *See* Commissioner's Br. at 12. After conducting this audit, the Commissioner subsequently filed briefs in the Washington state court proceedings expressing his conclusion that DSHS fully complied with the governing federal law. Specifically, the Commissioner stated that "foster care is a type of current maintenance" (Commissioner's Br. at 10, 12, 15) and that DSHS's use of SSI and Title II funds to pay for foster care expenses fully complies with representative payee portions of the Act and the

beneficiaries' best interests. *Id.* at 12, 15. Given the Commissioner's unique familiarity with the relevant federal laws and policy, and his careful review of the specific practices now at issue, the Commissioner's conclusions are entitled to considerable deference. This Court accordingly should hold, consistent with the Commissioner's conclusions, that DSHS is entitled to apply the at-issue benefits towards the cost of foster care under federal law.

B. The Commissioner Is Well-Equipped to Ensure Continuing Compliance with the Act and Implementing Regulations.

In addition to disregarding the Commissioner's role in interpreting the Act and the DSHS practices to date, the Washington Supreme Court further failed to recognize that the Commissioner also is in a unique position to ensure continuing compliance by DSHS (and like state agencies) on a going-forward basis, both through existing means and potential legislative and/or regulatory reforms.

The Commissioner already has in place a number of safeguards to ensure that payees such as DSHS utilize Social Security benefits in the best interests of the child, beginning with the payee selection process. As an initial step in that process, the Commissioner must attempt to identify and appoint someone who has an existing relationship with the child—a parent, step-parent, relative or close friend—as the representative payee (if possible), and will resort to appointment of an agency only as a matter of last resort. 20 C.F.R. §§ 404.2021(b); 416.621(b). Prior to appointing an agency as payee, the Commissioner is required to conduct an investigation of the agency. 42 U.S.C. §§ 405(j)(2)(A); 1383(a)(2)(B)(i). The Commissioner must also notify the beneficiary's legal guardian in writing of the appointment and provide an opportunity for appeal of the appointment. 42 U.S.C. §§ 405(j)(2)(E)(ii); 1383(a)(2)(B)(xi)-(xiii).

Following the selection of DSHS or another representative payee, the Commissioner is required to "establish a system of accountability" to ensure that the benefits are properly used and can require a written report from the payee at any time documenting on how the benefits are being used and how those usages further the child's best interests. 42 U.S.C. §§ 405(j)(3)(B) and (D); 1383(a)(2)(C)(ii) and (iv). One component of this "system of accountability," at least as it applies in this case to DSHS, requires that the representative payee submit to the SSA a yearly accounting of benefits received, used, and conserved for each child receiving benefits. App. at 67. These existing measures help ensure a payee's compliance with the applicable law.

Moreover, the Commissioner and the SSA have a number of potential additional tools at their disposal to assure that SSI and Title II benefits are not misused in the future. For example, in addition to the existing reporting requirements outlined above, the SSA could require additional accounting procedures specifically directed at states' use of Social Security benefits to reimburse foster care expenses, including documentation of the amounts of benefits used for each different expense and statistics regarding the number of beneficiaries who maintained eligibility and continued to receive SSI when they exited from foster care. Similarly, SSA could require that the foster children's case plans state precisely how the state is ensuring that each child's special needs (and, therefore, "best interests") are being addressed. In order to further this goal, SSA could require additional notice of a child's receipt of benefits to those social workers and foster parents who work with, care for, and/or otherwise have a connection with that particular child. Armed with this knowledge, and given their relationship with the individual child beneficiary, these social workers and foster parents then could request services for and advocate on behalf of the child based upon their unique familiarity with the child's special needs.

These procedural safeguards, both existing and potential, evidence that the Commissioner is well-equipped to monitor compliance with federal law and that the SSA should be allowed to do so on a case-by-case basis. In contrast, the Washington Supreme Court's decision would completely eradicate (on an across-the-board basis) a practice approved by the Commissioner and followed in every state. The state court decision therefore goes too far in eliminating a vitally important federal program for children in foster care. Accordingly, this Court should reverse the holding below.

III. THE STATE COURT DECISION MAY PROFOUNDLY AND ADVERSELY IMPACT THE AVAILABILITY AND USE OF SOCIAL SECURITY BENEFITS FOR NEEDY CHILDREN NATIONWIDE.

While this case originated with the Washington state courts, its interpretation of federal law presents issues of profound national impact, particularly as it relates to SSI beneficiaries. SSI benefits are available to children with disabilities who fall below certain minimum income and resource levels. *See* 42 U.S.C. § 1382-1382d; 20 C.F.R. § 416.02. Unlike children receiving Title II benefits, foster children receiving SSI can lose their benefit eligibility if their resources creep above a certain minimal level, currently $2,000. 20 C.F.R. § 416.1205(c). A number of states have endeavored to identify children with disabilities and, where appropriate, attempt to help these children both qualify for and subsequently maintain their eligibility for SSI benefits. The decision below could severely jeopardize those efforts.

In Washington, DSHS has retained a specially-trained staff, whose sole job it is to review the foster care caseload for children with disabilities, assess their needs, and assist them in applying to the Social Security Administration for benefits. *See* Petition at 9. Washington also appeals preliminary denials of benefits to ensure that the children

receive the benefits to which they are entitled. App. at 63. In addition, DSHS monitors each foster child beneficiary's resource level and spends down any amount exceeding the statutory maximum on the child's special needs in order to sustain his or her eligibility for SSI. App. at 64. Were it not for these efforts by the state agencies in Washington and elsewhere, the disabilities of many of these children might go unrecognized, and they would never be determined eligible for—or actually receive—benefits. The state agency's willingness to serve as representative payee is essential to these children receiving benefits. Because many of these children often have no relative, guardian or close friend who is suitable and willing to serve as a representative payee on their behalf, children depend on the state agency to perform that function. The rule announced by the Washington Supreme Court could severely affect whether and how the States decide to continue in these roles.

As the Commissioner observed, the Supreme Court of Washington's decision "hamstring[s] the Commissioner's ability to locate effective representative payees for minor children" by "eviscerat[ing] the important function" that state agencies play as representative payee. Commissioner's Br. at 8. What the Commissioner understands—and what the Washington Supreme Court failed adequately to consider—is that an agency like DSHS only acts as representative payee when there is *no one else to act in that capacity*, a result ensured by SSA regulations listing the state agencies last in the order of preference in selecting a representative payee. 20 C.F.R. § 404.2021(b). Given the fiscal pressures on state governments, Washington likely will not be able to continue the investment of staff and resources to identify children with disabilities and seek out Social Security benefits on their behalf if the Washington Supreme Court decision is allowed to stand. The state's ability to make the necessary investments to represent the child's interest to the SSA and act as a

representative payee for children will be severely impaired unless it can offset the costs involved in seeking and monitoring benefits for these children.

Precluding states from offsetting foster care expenses with Social Security benefits inevitably will produce a host of unfortunate results. If agencies like DSHS are unable to serve as representative payee (either at all or to the same extent that they have done in the past), many children in foster care who are eligible for Social Security benefits and who heretofore have had no one but such agencies (the SSA's last choice) to act as their representative payee *will not receive* their benefits. In fact, it is very likely that the severity of their disabilities and potential for receiving benefits will not even be recognized. Likewise, while a reduction in DSHS's role as representative payee does not mean that Washington's children will go without foster care, it does mean that, without the offset, there will be fewer resources for *all* of the children in foster care in Washington. This serves only to harm those unfortunate children who already have too little.

Accordingly, in addition to the loss of benefits, children who are eligible for SSI benefits would also be disadvantaged in other ways. For example, many of these children would not get the special attention that is now directed to their disabilities. The SSI application process requires a thorough assessment of the applicants' disabilities and how those disabilities impact their daily functioning. This assessment is especially important in determining the children's individual service needs. Some of the children also receive extra benefits and services that are not normally available in foster care, such as special therapy and rehabilitation, and sometimes housing modifications. They may also receive a special trust account to help pay for additional services and supports.

The receipt of these benefits not only helps ensure a minimum standard of care for the beneficiaries, but also helps

children continue to receive the services and supports they need when they are ready to leave foster care. For example, a child in foster care's eligibility for SSI, and consequently also for Medicaid, may make it easier for that child to reunite safely with his or her family, which may be overwhelmed by the financial responsibility of caring for a child with special needs. In the State of Washington in 2000, 119 children in foster care with SSI benefits were reunited with their families. In instances where the child who returns home continues to be financially eligible for SSI, the benefits help the parent adequately meet the child's special needs. Receipt of benefits may also help to facilitate adoptions for children, when returning home is not appropriate or safe, since children eligible for SSI are automatically eligible for federal Title IV-E Adoption Assistance payments. These payments help to ease the financial challenges faced by prospective adoptive parents who wish to adopt a child with special needs, and also automatically trigger the child's eligibility for Medicaid assistance. In the year 2000, 72 children receiving SSI benefits were adopted in Washington.

The receipt of SSI benefits also assists those young people who age out of foster care at age 18 or older, but who as adults with disabilities still need continuing assistance from the Social Security system. The fact that a young adult received SSI as a child in foster care can often ease the way for help from the adult system. In addition, children who receive Title II and SSI may exit care with at least some savings in a trust fund to help them as they struggle to make it on their own for the first time.

Because the State is—by federal law—the last line of defense for children in foster care who are eligible for Social Security benefits, if the State is precluded or discouraged from acting as the representative payee for those children, it is likely that no one will. These children therefore face the possibility of losing important benefits if the State cannot

assume the role of representative payee. Because the Washington Supreme Court's interpretation of the Social Security Act and regulations discourages state agencies from serving as representative payees, this decision likely will have a profound adverse impact on the very children the Act is designed to protect.

CONCLUSION

For the foregoing reasons, the Court should reverse the decision of the Washington Supreme Court and hold that the Social Security Act and implementing regulations permit DSHS (and/or a like state agency), in its role as representative payee on behalf of a foster child eligible to receive SSI and/or Title II benefits, to use those benefits to pay for the current care and maintenance of the child, including devoting a portion of the benefits to pay for foster care expenses for the children.

Respectfully submitted,

MICHAEL L. MARTINEZ *
DAVID L. HAGA
BRIDGET K. ALLISON
CROWELL & MORING LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 624-2500

Attorneys for Children's Defense Fund, Catholic Charities USA, Child Welfare League of America, and Alliance for Children and Families

* Counsel of Record

August 2, 2002

Supreme Court, U.S.
FILED
AUG - 2 2002
OFFICE OF THE CLERK

No. 01-1420

In the Supreme Court of the United States

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, ET AL., PETITIONERS

v.

GUARDIANSHIP ESTATE OF DANNY KEFFELER, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONERS

THEODORE B. OLSON
Solicitor General
Counsel of Record
ROBERT D. MCCALLUM, JR.
Assistant Attorney General
EDWIN S. KNEEDLER
Deputy Solicitor General
PATRICIA A. MILLETT
Assistant to the Solicitor General
WILLIAM KANTER
JONATHAN H. LEVY
Attorneys
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

QUESTION PRESENTED

Whether a state agency, acting as the representative payee for a foster child who is receiving Social Security benefits, violates the Social Security Act's anti-alienation provision, 42 U.S.C. 407(a), when it uses those benefit payments to pay for the child's current needs and maintenance.

TABLE OF CONTENTS

	Page
Interest of the United States	1
Statement:	
1. Legal framework	1
2. Factual and procedural background	7
Summary of argument	9
Argument:	
A representative payee's application of Social Security benefits to pay for the beneficiary's monthly needs and maintenance comports with the Social Security Act's text, purpose, and implementing regulations	11
A. Petitioners' practice is consistent with the text and purposes of the Social Security Act's representative payee provisions and implementing regulations	11
1. The statute and regulations expressly authorize petitioner's practice	11
2. The Washington Supreme Court's focus on whether the State would otherwise bear the full cost of foster care is incorrect and irreconcilable with congressional purpose	12
3. State payees make a vital contribution to the functioning of the Social Security system	17
B. Petitioners' use of Social Security benefits to meet the beneficiaries' current needs is consistent with the Social Security Act's anti-alienation provision	20
1. The statutory text permits petitioners' payments	20
2. The use of Social Security funds to meet current needs is consistent with the purpose of the anti-alienation provision	23

TABLE OF CONTENTS—Continued: Page

3. Petitioners' practice is consistent with this Court's precedent 24
4. Labeling petitioners' practice a "reimbursement" is immaterial 27
Conclusion 30

TABLE OF AUTHORITIES

Cases:

Barnhart v. *Walton*, 122 S. Ct. 1265 (2002) 14, 22
Bennett v. *Arkansas*, 485 U.S. 395 (1988) 24, 25
Bowen v. *Gilliard*, 483 U.S. 587 (1987) 16
C.G.A. v. *State*, 824 P.2d 1364 (Alaska 1992) 27
Circuit City Stores, Inc. v. *Adams*, 532 U.S. 105 (2001) 21
Dependency of G.C.B., In re, 870 P.2d 1037 (Ct. App.), review denied, 881 P.2d 254 (Wash. 1994) 6
Econolo v. *Division of Reimbursements of the Dep't of Health & Mental Hygiene*, 769 A.2d 96 (Md. Ct. Spec. App. 2001) 27
Fidelity Fed. Sav. & Loan Ass'n v. *De la Cuesta*, 458 U.S. 141 (1982) 21
Guardianship of Nelson, In re, 547 N.W.2d 105 (Minn. Ct. App. 1996) 15
Gutierrez v. *Ada*, 528 U.S. 250 (2001) 21
Hisquierdo v. *Hisquierdo*, 439 U.S. 572 (1979) 22-23
Jahnke v. *Jahnke*, 526 N.W.2d 159 (Iowa 1994) 15
King v. *Schafer*, 940 F.2d 1182 (8th Cir. 1991), cert. denied, 502 U.S. 1095 (1992) 27
Mason v. *Sybinski*, 280 F.3d 788 (7th Cir. 2002), petition for cert. pending, No. 01-1653 (filed May 8, 2002) 23, 27
Mathews v. *De Castro*, 429 U.S. 181 (1976) 2, 13
Mellies v. *Mellies*, 815 P.2d 114 (Kan. 1991) 15
Nevada v. *Hicks*, 533 U.S. 353 (2001) 21

Cases—Continued: Page

Philpott v. *Essex County Welfare Bd.*, 409 U.S. 413 (1973) 23, 24, 25
Porter v. *Aetna Cas. & Sur. Co.*, 370 U.S. 159 (1962) 23
Rose v. *Rose*, 481 U.S. 619 (1987) 21, 23, 26
Rowan Cos. v. *United States*, 452 U.S. 247 (1981) 13
Shalala v. *Guernsey Mem'l Hosp.*, 514 U.S. 87 (1995) 22
Sullivan v. *Stroop*, 496 U.S. 478 (1990) 28
Sullivan v. *Zebley*, 493 U.S. 521 (1990) 2, 13

Statutes and regulations:

Social Security Act, 42 U.S.C. 301 *et seq.*:
Title II, 42 U.S.C. 401 *et seq.* ..... *passim*
42 U.S.C. 402(d) 2
42 U.S.C. 405 note 18
42 U.S.C. 405(a) 22
42 U.S.C. 405(j)(1)(A) 2, 5, 30
42 U.S.C. 405(j)(2)(A) 26
42 U.S.C. 405(j)(2)(A)(ii) 3
42 U.S.C. 405(j)(2)(B) 3, 26
42 U.S.C. 405(j)(2)(C)(i)(III) 3, 24
42 U.S.C. 405(j)(2)(C)(iii)(II) 3, 12, 24
42 U.S.C. 405(j)(2)(C)(iii)(III) 3, 12, 24
42 U.S.C. 405(j)(2)(C)(v)(II) 12
42 U.S.C. 405(j)(2)(E)(i) 4
42 U.S.C. 405(j)(2)(E)(ii) 4
42 U.S.C. 405(j)(3) 5
42 U.S.C. 405(j)(3)(A) 18
42 U.S.C. 405(j)(3)(B) 12, 18
42 U.S.C. 405(j)(3)(D) 5
42 U.S.C. 405(j)(3)(F) 3, 12
42 U.S.C. 405(j)(4)(B) 12
42 U.S.C. 407 8
42 U.S.C. 407(a) 5, 8, 20
42 U.S.C. 408(a)(5) 5

Statutes and regulations—Continued: Page

Title IV, 42 U.S.C. 601 *et seq.*:
42 U.S.C. 675(5)(E) 6
Title XVI, 42 U.S.C. 1381 *et seq.* 2
42 U.S.C. 1381 ..... 2, 13
42 U.S.C. 1382 2
42 U.S.C. 1382c 2
42 U.S.C. 1383(a)(2)(A)(i) 2
42 U.S.C. 1383(a)(2)(A)(iii) 5, 30
42 U.S.C. 1383(a)(2)(B)(i) 26
42 U.S.C. 1383(a)(2)(B)(i)(II) 3
42 U.S.C. 1383(a)(2)(B)(ii) 3, 26
42 U.S.C. 1383(a)(2)(B)(iii)(III) 3, 24
42 U.S.C. 1383(a)(2)(B)(v)(I) 24
42 U.S.C. 1383(a)(2)(B)(v)(II) 3, 12
42 U.S.C. 1383(a)(2)(B)(v)(III) 3, 12, 24
42 U.S.C. 1383(a)(2)(B)(vii)(II) 12
42 U.S.C. 1383(a)(2)(B)(xi) 4
42 U.S.C. 1383(a)(2)(B)(xii) 4
42 U.S.C. 1383(a)(2)(C) 5
42 U.S.C. 1383(a)(2)(C)(i) 18
42 U.S.C. 1383(a)(2)(C)(ii) 12, 18
42 U.S.C. 1383(a)(2)(C)(iv) 5
42 U.S.C. 1383(a)(2)(D)(ii) 3, 12
42 U.S.C. 1383(d) 8
42 U.S.C. 1383(d)(1) 5, 20
42 U.S.C. 1383a(a)(4) 5
Wash. Admin. Code:
§ 388-70-069 (1983) 6
§ 388-25-0210 (2001) 6
Wash. Rev. Code Ann. (West):
§ 13.34.030(5) (1993 & Supp. 2001) 5
§ 13.34.130(1)(b) (1993 & Supp. 2001) 5, 6
§ 13.34.180 (1993 & Supp. 2001) 6
§ 13.34.200 (1993 & Supp. 2001) 6
§ 13.34.210 (1993 & Supp. 2001) 6
§ 74.13.060 (1993) 6

Statues and regulations—Continued: Page

§ 74.20A.010 (1993) 6, 15, 24
20 C.F.R.:
Section 402.35(b)(1) 14
Section 404.508(a) 2, 13
Section 404.2001 2
Section 404.2010 2
Section 404.2010(b) 2
Section 404.2020 ..... 3, 4, 26
Section 404.2021 2
Section 404.2021(b)(7) 12
Section 404.2025 3
Section 404.2030 4
Section 404.2035(a) 4, 26, 29, 30
Section 404.2040(a) 4, 12, 28
Section 404.2040(d) 4, 24, 26
Section 404.2045 4
Section 404.2050 5
Section 416.110 ..... 2, 13
Section 416.601 2
Section 416.610 2
Section 416.610(b) 2
Section 416.620 ..... 3, 4, 26
Section 416.621 2
Section 416.621(b)(7) 12
Section 416.625 3
Section 416.630 4
Section 416.635(a) 4, 26, 29, 30
Section 416.640(a) 4, 12, 28
Section 416.640(d) 4, 24, 26
Section 416.645 4
Section 416.650 5
Section 422.408 (1970) 14
Wash. St. Reg. 01-08-047 (Apr. 30. 2001) 6

Miscellaneous:

Black's Law Dictionary (5th ed. 1979) 21
47 Fed. Reg. (1982):
p. 30,468 ..... 4, 12
p. 30,470 ..... 4, 12

Miscellaneous—Continued:	Page
H.P. Rep. No. 615, 74th Cong., 1st Sess. (1935)	13, 23
H.R. Rep. No. 728, 76th Cong., 1st Sess. (1939)	23
H.R. Rep. No. 702, 95th Cong., 1st Sess. Pt. 1 (1977)	13
H.R. Conf. Rep. No. 1039, 98th Cong., 2d Sess. (1984)	18
H.R. Conf. Rep. No. 964, 101st Cong., 2d Sess. (1990)	18
H.R. Rep. No. 506, 103d Cong., 2d Sess. (1994)	18
Secretary of Health & Human Servs., *Report to Congress: High Risk Representative Payee Study* (Nov. 1992)	19
S. Rep. No. 628, 74th Cong., 1st Sess. (1935)	13, 23
S. Rep. No. 734, 76th Cong., 1st Sess. (1939)	23
S. Rep. No. 1243, 94th Cong., 2d Sess. (1976)	26
Social Security Admin.:	
Final Report of the Representative Payment Advisory Comm. (Nov. 1996)	14
Office of Program Benefits, *Policy Instruction GS 01-00-OPB* (Mar. 29, 2000)	26
Policy Instruction EM-00072 (June 1, 2000)	5
Program Operations Manual System (2002) (*available at* http://policy.ssa.gov/aboutpoms):	
POMS GN 02401.001	27
POMS GN 02401.001(B)(2)	22
POMS GN 02410.200(B)	22
POMS GN 02410.001	27
POMS GN 00502.00 *et seq.*	3
POMS GN 00502.105	2-3
POMS GN 00502.159(B)	12
POMS GN 00602.020	15
POMS GN 00602.020(B)(3)	16
POMS GN 00604.000 *et seq.*	30
S.S.R. (Cum. Ed. 1966-1970):	
No. 66-20, 1966 WL 3055	14
No. 68-18, 1968 WL 3918	14
Wash. Dep't of Social & Health Servs., *Trust Fund Handbook* (1999)	8

In the Supreme Court of the United States

No. 01-1420

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, ET AL., PETITIONERS

v.

GUARDIANSHIP ESTATE OF DANNY KEFFELER, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONERS

INTEREST OF THE UNITED STATES

This case concerns whether a state agency, appointed by the Commissioner of Social Security as a representative payee to administer the Social Security benefits of children in state foster care, may use those benefits to provide for the children's current needs and maintenance. This question affects the manner in which all fifty States administer the Social Security benefits of children in foster care. The United States has a significant interest in the proper interpretation of the Social Security Act and its implementing regulations and the proper use of federal funds disbursed under the Act. This Court previously invited the Solicitor General to file a brief expressing the views of the United States during proceedings on Washington's application to recall and stay the mandate of the Washington Supreme Court.

STATEMENT

1. Legal Framework

a. Title II of the Social Security Act (Act), 42 U.S.C. 401 *et seq.*, establishes a federal insurance program to pay cash

benefits to elderly and disabled workers and to their survivors and dependents. The Title II insurance program is "designed to prevent public dependency," *Mathews* v. *De Castro*, 429 U.S. 181, 186 n.6 (1976), by ensuring workers and their families the "income required for ordinary and necessary living expenses," 20 C.F.R. 404.508(a). A minor child may receive Title II benefits if his parent is entitled to receive such benefits, or if he is the surviving dependent of a deceased parent who was eligible for such benefits. 42 U.S.C. 402(d).

Title XVI of the Social Security Act, 42 U.S.C. 1381 *et seq.*, creates the Supplemental Security Income (SSI) program, which provides a "guaranteed minimum income level" for financially needy individuals who are aged, blind, or disabled. *Sullivan* v. *Zebley*, 493 U.S. 521, 524 (1990); see also 42 U.S.C. 1381; 20 C.F.R. 416.110. A child may receive SSI benefits if he or she is blind or disabled and lacks significant financial resources. See 42 U.S.C. 1382, 1382c; *Zebley*, 493 U.S. at 524-526.

b. Under both the Title II and SSI programs, benefits are usually paid directly to the beneficiary. The Social Security Administration (Administration), however, may pay those benefits to an individual or entity as the beneficiary's "representative payee" if doing so serves the beneficiary's interests. 42 U.S.C. 405(j)(1)(A), 1383(a)(2)(A)(i); 20 C.F.R. 404.2001, 404.2010, 416.601, 416.610. The Commissioner generally appoints a representative payee for beneficiaries who are under 18 years of age or who suffer from a physical or mental impairment that would prevent them from properly managing their payments. 20 C.F.R. 404.2010(b), 416.610(b). The regulations establish "flexible" preferences for selection of a representative payee for beneficiaries who are minors, generally giving highest priority to a natural or adoptive parent, legal guardian, or relative. 20 C.F.R. 404.2021, 416.621; Social Security Admin., Program Operations Manual

System (POMS) GN 00502.105 (2002), available at <http://policy.ssa.gov/poms.nsf/aboutpoms>. The regulations also permit a public or private "authorized social agency or custodial institution" to serve as a representative payee, but such entities are last in the "[o]rder of preference." *Ibid.*; see also 42 U.S.C. 405(j)(3)(F), 1383(a)(2)(D)(ii).[1]

Prior to appointing a representative payee, the Commissioner of Social Security must undertake an investigation to determine that certification of the particular payee "is in the interest of" the beneficiary. 42 U.S.C. 405(j)(2)(A)(ii), 1383(a)(2)(B)(i)(II). That investigation must include verification of the applicant's identity, connection to the beneficiary, and lack of relevant criminal record or prior history of misusing funds. 42 U.S.C. 405(j)(2)(B), 1383(a)(2)(B)(ii); 20 C.F.R.404.2025, 416.625. The investigation must also attempt to identify any other potential representative payees whose appointment might be preferred. See 42 U.S.C. 405(j)(2)(A)(ii), 1383(a)(2)(B)(i)(II); 20 C.F.R. 404.2020, 416.620; POMS GN 00502.000 *et seq.* The Commissioner will review evidence concerning:

> (a) [t]he relationship of the person to the beneficiary; (b) [t]he amount of interest that the person shows in the beneficiary; (c) [a]ny legal authority the person, agency, organization or institution has to act on behalf of the beneficiary; (d) [w]hether the potential payee has custody of the beneficiary; and (e) [w]hether the potential payee is in a position to know of and look after the needs of the beneficiary.

---

[1] The Social Security Act generally prohibits a "creditor of [a beneficiary] who provides [the beneficiary] with goods or services for consideration" from being appointed a representative payee. 42 U.S.C. 405(j)(2)(C)(i)(III), 1383(a)(2)(B)(iii)(III). The Act excepts from this prohibition, however, "a legal guardian or legal representative of such individual," as well as "a facility that is licensed or certified as a care facility under the law of a State or a political subdivision of a State." 42 U.S.C. 405(j)(2)(C)(iii)(II) and (III), 1383(a)(2)(B)(v)(II) and (III).

20 C.F.R. 404.2020, 416.620. The Commissioner must notify the beneficiary or the beneficiary's legal guardian in advance of her intention to appoint a representative payee and provide them an opportunity to challenge the appointment in a hearing before the Commissioner, with judicial review available. 42 U.S.C. 405(j)(2)(E)(i) and (ii), 1383(a)(2)(B)(xi) and (xii); 20 C.F.R. 404.2030, 416.630.

A representative payee must spend Social Security payments "for the use and benefit of the beneficiary," in the manner and for the purposes that the payee determines "to be in the best interests of the beneficiary." 20 C.F.R. 404.2035(a), 416.635(a). The regulations specifically consider any payments used for "the beneficiary's current maintenance"—which includes "cost[s] incurred in obtaining food, shelter, clothing, medical care, and personal comfort items" —as legitimate expenditures "for the use and benefit of the beneficiary." 20 C.F.R. 404.2040(a), 416.640(a). Such payments are deemed to be in the beneficiary's best interests. 47 Fed. Reg. 30,468, 30,470 (1982) ("Benefits certified to a representative payee are considered to be used in a beneficiary's best interests if they are used for a beneficiary's current maintenance."). Under the regulations, a representative payee "may not be required to use benefit payments to satisfy a debt of the beneficiary"; however, it is permissible for a payee to satisfy such a debt "if the current and reasonably foreseeable needs of the beneficiary are met" and it is in the beneficiary's interest to do so. 20 C.F.R. 404.2040(d), 416.640(d). Finally, if the monthly benefit payment exceeds the amount used by the representative payee for appropriate expenditures, the payee must conserve or invest the balance of the monthly benefits and hold them in trust for the beneficiary. 20 C.F.R. 404.2045, 416.645.

The Social Security Act requires representative payees to submit annual reports and accountings for each individual beneficiary, consistent with a "system of accountability monitoring" adopted by the Commissioner. 42 U.S.C. 405(j)(3), 1383(a)(2)(C). In addition to those reports, the Commissioner conducts triennial site reviews of certain institutional representative payees. Social Security Admin., *Policy Instruction EM-00072* (June 1, 2000).[2] The Commissioner also can require a report at any time if she "has reason to believe that the person receiving such payments is misusing [them]." 42 U.S.C. 405(j)(3)(D), 1383(a)(2)(C)(iv). Misuse of benefits by a representative payee will result in termination of payee status, and is punishable as a felony by up to five years' imprisonment. 42 U.S.C. 405(j)(1)(A), 408(a)(5), 1383(a)(2)(A)(iii), 1383a(a)(4); 20 C.F.R. 404.2050, 416.650.

c. The Social Security Act contains an anti-alienation provision that prohibits creditors and other third parties from attaching or encumbering Social Security benefits:

> The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

42 U.S.C. 407(a); see also 42 U.S.C. 1383(d)(1).

d. Washington provides foster care services for all children who have been removed from their parents' custody due to abuse, neglect, abandonment, or juvenile justice proceedings. Pet. App. A3-A4; see also Wash. Rev. Code Ann. §§ 13.34.030(5), 13.34.130(1)(b) (West 1993 & Supp. 2001). Before the child is placed in foster care, a court order of depenency generally will assign the Washington Department of

---

[2] The Social Security Administration conducted an on-site review of petitioners' operations in August 1998 and found their performance as representative payee to be in compliance with the agency's rules. Pet. App. A77-A78. We have been informed that a second audit in November 2000 again found no defects in overall performance.

Social and Health Services (Washington) "custody, control, and care" of the child. *Id.* § 13.34.130(1)(b) (West 1993 & Supp. 2001); see also *In re Dependency of G.C.B.*, 870 P.2d 1037 (Wash. Ct. App.), review denied, 881 P.2d 254 (Wash. 1994). If the child is left in foster care for six to fifteen months and there are no reasonable prospects of parental reunification, Washington may seek an order terminating parental rights. Wash. Rev. Code Ann. § 13.34.180 (West 1993 & Supp. 2001); see also 42 U.S.C. 675(5)(E). Upon termination of parental rights, Washington will have complete legal custody and control over the child. Wash. Rev. Code Ann. §§ 13.34.200, 13.34.210 (West 1993 & Supp. 2001); see also Pet. App. A4 n.3.

Washington provides foster care services to all children who need it, which results in its supervision of more than 10,000 children in foster care annually. Pet. App. A4. In order to "render resources more immediately available to meet the needs of minor children" and to "reliev[e], at least in part, the burden presently borne by the general citizenry," Washington law renders parents financially responsible for supporting their children while in foster care. Wash. Rev. Code Ann. § 74.20A.010 (West 1993). In addition, Washington law gives petitioners the authority to use "moneys and other funds" that come into the possession of the foster child while in state custody to offset "the amount of public assistance otherwise payable to" the child. *Id.* § 74.13.060. Pursuant to that law, Washington promulgated a regulation that provides that Title II and SSI benefits "shall be used on behalf of the child to help pay for the cost of foster care received." Wash. Admin. Code § 388-70-069 (1983), repealed Wash. St. Reg. 01-08-047 (Apr. 30, 2001); see also Wash. Admin. Code § 388-25-0210 (2001) ("The department must use income not exempted to cover the child's cost of care.").

2. Factual and Procedural Background

a. As of September 1999, approximately 1500 children in Washington's foster care program were receiving Title II or SSI benefits. Pet. App. A10. For almost all of those children, the Commissioner has chosen petitioner, the Washington Department of Social and Health Services, to serve as representative payee. *Ibid.* The Department divides its responsibilities as representative payee and foster care provider between two offices, the Children's Administration and the Trust Fund Unit. *Id.* at A10-A11. The Children's Administration provides foster care placement, monitoring, and services. As part of its services, the Children's Administration will apply for Social Security benefits on a child's behalf and will offer to serve as representative payee. The Children's Administration also provides foster parents a monthly allotment to pay for the child's food, shelter, clothing, and other basic needs. *Id.* at A11-A12.

The Trust Fund Unit manages the Foster Care Trust Fund Account at the Office of the State Treasurer. All Social Security benefits received by a child in foster care are deposited into a single umbrella account, which comprises subsidiary accounts for each individual beneficiary child. Pet. App. A11. Each month, the Children's Administration provides the Trust Fund Unit with a report showing the amount of money paid for the child's maintenance. The Trust Fund Unit then transfers funds from the individual child's subsidiary account to the Children's Administration to offset or satisfy that month's cost of care. *Id.* at A12. The Trust Fund Unit's payment scheme thus "is a reimbursement process, but only in the accounting sense." *Id.* at A61. Any unused funds in a subsidiary account are conserved for the benefit of the child. *Id.* at A13.

While the Trust Fund Unit "typically" uses a child's Social Security benefits to meet basic monthly needs, the Unit has the discretion, at the request of the Children's Administra-

tion, "to allow all of the child's trust funds to be expended for extra items and special needs with nothing to be paid to Children's Administration for 'reimbursement'" of monthly foster care expenses. Pet. App. A57; see also J.A. 139, 149-179 (documenting petitioners' expenditures for special needs); Wash. Dep't of Social & Health Servs., *Trust Fund Handbook* 8-10 (1999). Petitioners "will give priority to the special needs when it is consistent with the social security regulations and when it is in the child's best interest." J.A. 195. Examples of special needs deemed to be of direct benefit to the child include orthodonture, holiday presents, a computer, athletic equipment, or a vacation. Pet. App. A57-A58; J.A. 139, 149-179. On request of the Children's Administration, the Trust Fund Unit also will conserve Social Security benefits for a child's impending emancipation or for other appropriate expenses. Pet. App. A57.

b. Respondents are foster children in Washington who receive or have received Title II or SSI benefits and for whom petitioners have served as representative payee. Respondents filed a class action suit alleging, among other things, that petitioners' use of the foster children's Social Security benefits to pay for the children's monthly maintenance needs while in foster care violates the anti-alienation rule in 42 U.S.C. 407(a) and 1383(d).

On cross-motions for summary judgment, the state trial court ruled (Pet. App. A122-A130) that petitioners' use of the Social Security benefits to meet respondents' current maintenance needs amounted to an improper alienation of those funds, prohibited by 42 U.S.C. 407. Pet. App. A130. The court enjoined petitioners from continuing that practice and ordered restitution of past Social Security benefits used to pay for foster care. *Id.* at A117-A119.

c. After initially remanding the case for further factual findings (Pet. App. A43-A45, A46-A73), the Washington Supreme Court affirmed. *Id.* at A1-A39. The court acknowledged that "[t]here is nothing ipso facto wrong with [petitioners] applying to become the representative payee," and that, in fact, the Social Security Act and its implementing regulations "explicitly contemplate" such a role. *Id.* at A25. The court also agreed that "[u]sing this money for the care and maintenance of the beneficiary * * * would indeed be in the best interest of the beneficiary." *Id.* at A28.

The court reasoned, however, that petitioners' status as representative payee "is at best immaterial to the analysis" of whether expending the Social Security benefits for care and maintenance violates the anti-alienation provision. Pet. App. A29. The court instead found it significant that, in its view, the "facial logic of [petitioners'] reimbursement scheme demonstrates a * * * relationship involving creditor-type acts, vis-a-vis foster children and their [Social Security] benefits," *id.* at A20. The court further determined that using Social Security benefits to meet the foster child's current needs was not in the child's best interests because petitioners would pay those costs if the child did not receive such benefits. *Id.* at A28. Giving the anti-alienation provision a "broad" and "expansive interpretation," *id.* at A29, A23, the court concluded that petitioners' "reimbursement process *is* 'other legal process,'" prohibited by the anti-alienation provision, *id.* at A25.

Three Justices concurred in part and dissented in part. Pet. App. A32-A39. They agreed with the majority that petitioners could not use Social Security funds to reimburse "*past due* foster care payments," but would have held that petitioners' use of Social Security funds to offset *current* foster care costs does not violate the anti-alienation provision. *Id.* at A32.

SUMMARY OF ARGUMENT

Despite the complexity of the statutory and regulatory regime, the resolution of this case is quite straightforward. Petitioners' use, as representative payee, of Social Security

benefits to pay for the costs of the beneficiaries' current needs and maintenance is expressly authorized by the Social Security Act and implementing regulations, and is not prohibited by the anti-alienation provision.

Respondents do not dispute that state welfare agencies like the Washington Department of Social and Health Services may be appointed as representative payee. The statute and regulations both say they can. Indeed, for foster children, who almost by definition lack supporting family members, the State is often the only entity available to serve as representative payee. Petitioners' application of Social Security benefits to pay for the beneficiary's current needs and maintenance, moreover, is expressly permitted by the statute and regulations, and is deemed to be in the beneficiary's best interests.

Ignoring those plain statutory and regulatory directives, the Washington Supreme Court reasoned that the payments for current needs were inappropriate because petitioners would bear the costs of foster care regardless. But that same rationale would apply to all representative payees, including parents who serve as payees and who, like petitioners, have a legal obligation to support their children from their own resources. The Court's rationale would compel parents to exhaust their own finances before using any Social Security funds to meet their child's needs, regardless of the toll that would exact on the family unit as a whole and the inherent difficulties of administering such an intrusion into the family. The Washington Supreme Court's reasoning also overlooks that the central purpose of Social Security benefits is to prevent public dependency, not to perpetuate it.

The anti-alienation provision has no application to this case. By its plain terms, the anti-alienation provision prohibits only the efforts of those outside the statutory scheme to reach benefits through the use of "legal process." Payments made, pursuant to the statutory scheme, by a duly authorized representative payee, acting on behalf of a beneficiary, for the direct use and benefit of the beneficiary bear no logical relation to "legal process." The court's contrary holding not only disregards statutory text, but also puts the Social Security Act at war with itself, by construing the anti-alienation provision to prohibit exactly what the representative payee provisions permit.

ARGUMENT

A REPRESENTATIVE PAYEE'S APPLICATION OF SOCIAL SECURITY BENEFITS TO PAY FOR THE BENEFICIARY'S MONTHLY NEEDS AND MAINTENANCE COMPORTS WITH THE SOCIAL SECURITY ACT'S TEXT, PURPOSE, AND IMPLEMENTING REGULATIONS

Petitioners' use, as representative payee, of Social Security funds to meet the beneficiary's current needs for food, clothing, shelter, and similar maintenance expenses is expressly permitted by the statutory and regulatory provisions governing representative payees. The practice is also consistent with the purpose of the Social Security benefits and the practicable functioning of this nationwide benefits program. Nothing in the text, legislative history, or purpose of the Social Security Act's anti-alienation provision speaks to, let alone forbids, petitioners' practice.

A. Petitioners' Practice Is Consistent With The Text And Purposes Of The Social Security Act's Representative Payee Provisions And Implementing Regulations

1. The statute and regulations expressly authorize petitioners' practice

The Social Security Act expressly authorizes state governmental agencies like the Washington Department of Social and Health Services to serve as representative payees. The Act identifies them as potential payees, both in

their capacity as the legal guardian of children placed in their care and as eligible state institutions. 42 U.S.C. 405(j)(2)(C)(iii)(II), (III), and (v)(II), (3)(B) and (F), (4)(B), 1383(a)(2)(B)(v)(II), (III), and (vii)(II), (C)(ii), (D)(ii). The Commissioner's implementing regulations confirm that state agencies may perform such a role. 20 C.F.R. 404.2021(b)(7), 416.621(b)(7); see also POMS GN 00502.159(B) ("An agency/court who is the legal custodian for a child is often the best payee for the child."). Indeed, the respondent class does not challenge the appointment of the Washington Department of Social and Health Services as the representative payee for children in foster care.

Petitioners' application of the children's Social Security benefits to meet their current needs for food, clothing, shelter, medical care, and similar maintenance items, moreover, epitomizes an appropriate expenditure of such funds. The regulations specifically define any payments used for "the beneficiary's current maintenance," which includes "cost[s] incurred in obtaining food, shelter, clothing, medical care, and personal comfort items," as legitimate expenditures "for the use and benefit of the beneficiary." 20 C.F.R. 404.2040(a), 416.640(a). Such current maintenance payments are deemed to be in the beneficiary's "best interests." 47 Fed. Reg. 30,468, 30,470 (1982).

2. The Washington Supreme Court's focus on whether the State would otherwise bear the full cost of foster care is incorrect and irreconcilable with congressional purpose

The Washington Supreme Court (Pet. App. A18, A28) reasoned that the use of Social Security benefits to meet current needs cannot be in a beneficiary's interest because the State would provide foster care services in any event. But nothing in the Social Security Act or implementing regulations suggests that the benefits are meant to be expended for current maintenance needs only as a last resort.

To the contrary, the express purpose of SSI benefits is to provide a "guaranteed *minimum* income level" for eligible children. *Sullivan* v. *Zebley*, 493 U.S. 521, 524 (1990) (emphasis added); see also 42 U.S.C. 1381. The payments are intended first and foremost to ensure, not funds for computers or vacations, but a "minimum level of income" for children who otherwise would not "have sufficient income and resources to maintain a standard of living at the established Federal minimum income level." 20 C.F.R. 416.110. Likewise, the purpose of Title II benefits is to provide workers and their families the "income required for *ordinary and necessary* living expenses." 20 C.F.R. 404.508(a) (emphasis added). Indeed, the goal of Title II payments, and Social Security benefits in general, is "to prevent public dependency," not to perpetuate it. *Mathews* v. *De Castro*, 429 U.S. 181, 186 n.6 (1976); see also H.R. Rep. No. 702, 95th Cong., 1st Sess. Pt. 1, at 3 (1977) ("the primary objective of the social security program [is] preventing dependency").

By allowing representative payees to use federal funds for their intended purposes of ensuring that current maintenance needs are met, and doing so in a way that simultaneously enhances the overall efficacy of the States' own welfare programs, the Commissioner fulfills the statutory purpose of reducing the dependency of federal beneficiaries on public welfare. See *Rowan Cos.* v. *United States*, 452 U.S. 247, 257 (1981) ("Congress enacted the Social Security Act * * * 'to reduce * * * dependency in the future'") (quoting H.R. Rep. No. 615, 74th Cong., 1st Sess. 3 (1935), and citing S. Rep. No. 628, 74th Cong., 1st Sess. 2 (1935)). Further, the Commissioner's interpretation of the Act to permit petitioners' practice advances Congress's goals in a way that does not penalize States for their own generosity in providing welfare programs. The Washington Supreme Court's decision, by contrast, creates disincentives for state welfare programs and treats Social Security benefits as a windfall

that *must* leave the beneficiary's dependency on other forms of public support unabated.

Two Social Security Rulings issued by the Commissioner confirm that the fact that government would otherwise provide for the beneficiary's care does not mean that benefits should not be applied to current maintenance costs. In a 1968 ruling, the Commissioner explained that, "[a]lthough the Welfare Department is currently paying for the beneficiary's care" in a nursing home, it was "improper" for the payee to divert the funds to other expenses. The representative payee was obliged first to apply the benefits to compensate the institution for the costs of the beneficiary's current maintenance. Social Security Ruling 68-18, 1968 WL 3918. See also Social Security Ruling 66-20, 1966 WL 3055 ("representative payee may properly use a part of the beneficiary's social security benefits to meet the customary charges made by the institution for the beneficiary's care and maintenance," even though the State would pay in any event for the beneficiary's confinement in a mental hospital based on criminal insanity).[3] The Commissioner's longstanding position on the question presented here is thus the product of thorough deliberation and practical experience in administering the Social Security program. See *Barnhart* v. *Walton*, 122 S. Ct. 1265, 1269-1273 (2002).

Furthermore, nothing in the Washington Supreme Court's rationale is restricted to state agencies. The same

[3] Social Security Rulings are binding interpretations and statements of policy for the agency. See 20 C.F.R. 402.35(b)(1) (2001); 20 C.F.R. 422.408 (1970). In addition, an advisory committee appointed by the Commissioner to study representative payment issues reviewed the question of whether representative payees should "reimburse" custodial institutions for the cost of the beneficiary's care. Social Security Admin., *Final Report of the Representative Payment Advisory Comm.* 35 (Nov. 1996). The Committee concluded that benefits should "be used to pay for 'cost of care' unless a compelling reason to do otherwise can be demonstrated." *Id.* at 37.

logic would dictate that parents serving as representative payees could not ordinarily apply their children's benefits to a monthly grocery or clothing bill, because the law obliges those parents, just as it does petitioners, to support their children's basic needs irrespective of the Social Security benefits. See Wash. Rev. Code Ann. § 74.20A.010 (West 1993). Under the Washington Supreme Court's rationale, only if the parents could demonstrate, to the satisfaction of potential federal auditors, that they would have been unable to meet the children's basic needs but for the Social Security benefits could they apply those funds for the purpose that Congress intended. Respondents offer no evidence that Congress intended the Social Security program to entail such a profound intrusion into traditional parental judgments.[4] And nothing in law or logic supports differential treatment for state government payees, who stand *in loco parentis* for the foster children. To the contrary, the statutory scheme envisions that all representative payees will use benefits to meet current maintenance expenses, without considering what would happen in a hypothesized world without such benefits.

[4] See POMS GN 00602.020 (where child resides in a household with others, benefits may be contributed to basic household expenses such as food and housing); *In re Guardianship of Nelson*, 547 N.W.2d 105, 108, 109 (Minn. Ct. App. 1996) (because Social Security benefits are "not a windfall" for the beneficiary, "a representative payee parent can use his or her child's social security survivor benefits for the child's current maintenance regardless of the parent's financial ability to meet those needs"); *Jahnke* v. *Jahnke*, 526 N.W.2d 159, 163-164 (Iowa 1994) ("There is no federal requirement that a parent's independent assets be exhausted before the child's benefits may be used for current maintenance."); *Mellies* v. *Mellies*, 815 P.2d 114, 117 (Kan. 1991) (parent "had no obligation to exhaust his personal finances in providing for [child's] support before spending any of [child's] social security benefits on the child's maintenance"; requiring such exhaustion "would place an intolerable burden on a surviving parent").

Finally, the Washington Supreme Court's rule that Social Security benefits cannot supplant other funds available to meet current needs would threaten significant disparities within families and the foster care system. In natural families struggling monthly to meet their basic needs, those children receiving Social Security benefits could be provided with trust funds or athletic equipment (Pet. App. A102-A105), while their unsubsidized siblings might have to do without. See POMS GN 00602.020(B)(3) (benefits can be used to support the family as a unit because maintaining "[t]he overall well being and stability of the family unit is of value to the child beneficiary"); cf. *Bowen* v. *Gilliard*, 483 U.S. 587 (1987).

Likewise, within foster families, foster children who do not receive Social Security benefits would have fewer amenities than those who do, and the level of payments for each child's basic foster care (as well as for meeting the special needs of children not receiving Social Security benefits) might have to be reduced to make up for the diversion of the Social Security benefits to purchasing special items for the approximately 15% of foster children who do receive Social Security benefits. The fueling of such divisions and inequities would not be in any child's best interests. And the end result of such a scheme would be that the use of Social Security benefits to buy computers or vacations would be less suspect and less scrutinized than a decision to buy food or shoes. That result would stand congressional intent on its head.[5]

[5] Under the Washington Supreme Court's rationale, even if petitioners dedicated 90% of each month's Social Security benefits to the beneficiary's special needs, the dedication of the remaining 10% of the funds to current maintenance would be prohibited.

3. State payees make a vital contribution to the functioning of the Social Security system

The Washington Supreme Court's holding was premised on the assumption (Pet. App. A18) that foster children would be better off with any representative payee other than the State. That assumption blinks reality. In the first place, there often are no other representative payees for such children. Their very presence in the foster care system suggests a lack of supportive, reliable family members or other responsible adults.

Second, as evidenced by the support of children's organizations for petitioners (see Cert. Amicus Brief of the Children's Defense Fund, Catholic Charities USA, Child Welfare League of America, and Alliance for Children and Families), the States are structurally better equipped than most payees to recognize entitlements to benefits and to identify underlying disabilities and appropriate treatment regimens to be supported by such benefits. The State's pursuit of benefits on behalf of the child, moreover, can increase the prospects for family reunification or adoption, by alleviating the financial pressures that a disability might otherwise create. See *id.* at 15-17.

Third, nothing in the record or the Commissioner's experience substantiates the Washington Supreme Court's supposition that petitioners do not serve their beneficiaries as well or dedicate as much funds to special needs as private payees do. Private payees have the same legal ability to apply benefits to current maintenance needs as the States do. In the Commissioner's experience, moreover, the majority of representative payees do just that. See also Appellants' Supp. Reply Brief, Wash. S. Ct. 22 n.61 ("The record supports the conclusion that private payees follow the law and pay for current maintenance."). Further, in Congress's experience, private payees are not uniformly preferable to the States. For example, because family payees often have

to live with a beneficiary, there is sometimes a risk that those payees will simply turn over the benefits to the beneficiary in an effort to avoid confrontation or to reduce intrafamilial tension. See H.R. Rep. No. 506, 103d Cong., 2d Sess. 58 (1994). In addition, the General Accounting Office has reported that, for beneficiaries suffering from drug or alcohol abuse, "approximately half of the family and friends who serve as representative payee exercise incomplete control over the beneficiaries' finances." *Ibid.*

Congress has consistently endorsed the role served by States as representative payees. The Social Security Act, for example, requires a system of annual accounting for all representative payees, except for State institutions. 42 U.S.C. 405(j)(3)(A) and (B), 1383(a)(2)(C)(i) and (ii). With respect to state payees, Congress left the Commissioner "flexibility to establish more appropriate and effective systems of auditing," suggesting only that review should be conducted at least triennially. H.R. Conf. Rep. No. 1039, 98th Cong., 2d Sess. 43 (1984).

In addition, when Congress overhauled the representative payee provisions in 1990, it directed the Commissioner to study "high-risk representative payees," with respect to whom experience had proven the danger of misuse or abuse to be heightened. 42 U.S.C. 405 note; H.R. Conf. Rep. No. 964, 101st Cong., 2d Sess. 930-931 (1990). Congress included in the category of high-risk payees the very alternative payees proposed by respondent (Supp. Br. in Opp. to Stay 5-6): "non-relative representative payees who do not live with the beneficiary," and "those who serve as a representative payee for five or more beneficiaries (under title II, title XVI or a combination thereof) and who are not related to them." *Id.* at 931; see 42 U.S.C. 405 note. Congress, however, expressly excepted from the category of high-risk payees "State governmental institutions." *Ibid.* The ensuing study revealed that public officials who serve as representative

payees "were least likely to raise concerns about performance—no incidents [of questionable or deficient performance] were found in the study." Secretary of Health & Human Servs., *Report to Congress: High-Risk Representative Payee Study* 4 (Nov. 1992); see also *id.* App. D, at 1 (state and local social service agencies had satisfactory performance in 97.2% of cases studied); *id.* App. D, at 3 (no deficient or questionable performances found where social worker or government representative is payee). Accordingly, the Washington Supreme Court's judgment that State payees are inherently less responsible than private payees is not a view that either Congress or the Commissioner shares.[6]

Congress's differential treatment of state payees recognizes that States execute their role as sovereigns charged with the well-being of their citizens and sworn to uphold and protect the children's rights. Because States have an independent duty to provide full care for foster children regardless of any federal benefits they may receive, States have no financial incentive to divert the funds from satisfying the needs of the beneficiary. States also have a long-term interest in maximizing the well-being and potential of children in their care, because those children will likely grow to be adult residents of the State.

---

[6] This is not to suggest that private payees are inherently suspect. In the Commissioner's view, many perform their duties in exemplary fashion and make a vital contribution to the Social Security program. The 1990 statute and its legislative history simply reflect that Congress viewed the probability of abuse or misuse to be higher for some categories of private payees than for state agencies.

B. Petitioners' Use Of Social Security Benefits To Meet The Beneficiaries' Current Needs Is Consistent With The Social Security Act's Anti-Alienation Provision

The Social Security Act's anti-alienation provision provides:

> The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

42 U.S.C. 407(a); see also 42 U.S.C. 1383(d)(1). The Washington Supreme Court held (Pet. App. A28-A29) that petitioners' use of foster children's benefits to pay for their current needs and maintenance—a practice expressly permitted by the representative payee provisions of the Act and regulations—violates the anti-alienation provision. That conclusion is without merit.

1. The statutory text permits petitioners' payments

The Washington Supreme Court's holding lacks any grounding in the text of the anti-alienation provision. Petitioners' expenditure of the funds for the use and benefit of the beneficiary does not amount to a transfer or assignment of the right to future payments. To the contrary, petitioners' service as representative payee is what has made it possible for the respondent foster children to receive their individual federal benefits on an ongoing basis. Nor does a payee's lawful and proper application of benefits to a beneficiary's current needs bear any resemblance to the execution of a judgment, a levy, attachment, or garnishment, or to the operation of any bankruptcy or insolvency law. Indeed, if routine payments by a representative payee fell within those terms, then the anti-alienation provision would render the

entire representative payee program inoperable. Courts, however, will not construe one statutory provision so as to render another nugatory. *Fidelity Fed. Sav. & Loan Ass'n* v. *De la Cuesta*, 458 U.S. 141, 163 (1982).

The Washington Supreme Court (Pet. App. A20-A29) suggested that petitioners' application of the benefits constitutes "other legal process" prohibited by the anti-alienation provision, stressing that Section 407 should be given an "expansive interpretation," *id.* at A23. But it is one thing to afford statutory text a broad interpretation; it is quite another thing to abandon text altogether. The phrase "other legal process" simply cannot be equated with "any accounting process" or "any process"—yet that is exactly what the court did here.

In common usage, legal process is "any means used *by a court* to acquire or exercise its jurisdiction over a person or over specific property." *Nevada* v. *Hicks*, 533 U.S. 353, 364 (2001) (emphasis added); see also *Rose* v. *Rose*, 481 U.S. 619, 643 (1987) (Scalia, J., concurring in part and concurring in the judgment) (describing reference in analogous anti-alienation provision to "attachment, levy, or seizure by any legal or equitable process whatever" as referring to "judicial processes"); *Black's Law Dictionary* 1085 (5th ed. 1979) (defining "legal process" in part as "a summons, writ, warrant, mandate, or other process issuing from a court").

The statute, moreover, does not prohibit any "legal process," but "*other* legal process." It is a well-established rule of statutory construction that, "[w]here general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words." *Circuit City Stores, Inc.* v. *Adams*, 532 U.S. 105, 114-115 (2001); see also *Gutierrez* v. *Ada*, 528 U.S. 250, 255 (2000) ("words and people are known by their companions"). Here, Congress's use of the word "other" makes explicit its intent

to limit "legal process" to the context established by the preceding examples. "[O]ther legal process" thus must be construed as embracing only mechanisms similar to execution, levy, attachment, and garnishment, all of which typically require some form of judicial or quasi-judicial intervention and result in an involuntary and coercive transfer of funds.

The Commissioner, whom Congress has charged with interpreting and implementing the Social Security Act, see, *e.g.*, 42 U.S.C. 405(a), similarly defines the "legal process" covered by the anti-alienation provision as "the means by which a court (or agency or official authorized by law) compels compliance with its demand; generally, it is a court order." POMS GN 02410.001(B)(2); see also *id.* GN 02410.200(B) (legal process is "any writ, order, summons or other similar process in the *nature of garnishment*. It may include, but is not limited to, an attachment, writ of execution, income execution order or wage assignment that is issued by a court of competent jurisdiction * * * or [a]n authorized official pursuant to an order of a court of competent jurisdiction or pursuant to State or local law; [a]nd is directed to a governmental entity."). That construction of the anti-alienation provision—which does not encompass petitioners' conduct here—is entitled to deference. See *Walton*, 122 S. Ct. at 1269-1273; *Shalala* v. *Guernsey Mem'l Hosp.*, 514 U.S. 87, 97-99 (1995). Deference is particularly appropriate because of the "statute's complexity, the vast number of claims that it engenders, and the consequent need for agency expertise and administrative experience" to prevent a construction of the anti-alienation provision that would confound and frustrate the routine operation of the representative payee system. *Walton*, 122 S. Ct. at 1273.

Nothing in the legislative history of the anti-alienation provision counsels otherwise. That provision has been in the Social Security Act since its inception in 1935. Committee Reports merely paraphrase the statutory language, and thus

provide no support for the Washington Supreme Court's textually untethered interpretation. See H.R. Rep. No. 615, *supra*, at 21; S. Rep. No. 628, *supra*, at 32; H.R. Rep. No. 728, 76th Cong., 1st Sess. 45 (1939); S. Rep. No. 734, 76th Cong., 1st Sess. 53 (1939). "It is not the province of state courts to strike a balance different from the one Congress has struck." *Hisquierdo* v. *Hisquierdo*, 439 U.S. 572, 590 (1979) (striking down judicially crafted modification of anti-alienation provision).

2. The use of Social Security funds to meet current needs is consistent with the purpose of the anti-alienation provision

Petitioners' practice also comports with the purpose of the anti-alienation provision, which is to protect social security beneficiaries and their dependents from those who seek to divert the funds to satisfy *past* debts rather than preserving them to meet the beneficiaries current needs. See *Mason* v. *Sybinski*, 280 F.3d 788, 793 (7th Cir. 2002), petition for cert. pending, No. 01-1653 (filed May 8, 2002); cf. *Rose*, 481 U.S. at 630 (purpose of analogous anti-alienation provision for veterans benefits is to "prevent the deprivation and depletion of the means of subsistence of veterans dependent upon these benefits as the main source of their income"); *Hisquierdo*, 439 U.S. at 584 (anti-alienation provisions "ensure[] that the benefits actually reach the beneficiary"); *Porter* v. *Aetna Cas. & Sur. Co.*, 370 U.S. 159, 162 (1962) (purpose of veterans' provision is to preserve funds "for the maintenance and support of the beneficiaries"); see also *Philpott* v. *Essex County Welfare Bd.*, 409 U.S. 413, 416 (1973) (analogy to veterans' provision "is relevant" to construction of Social Security Act's counterpart).

Petitioners' application, in its authorized capacity as representative payee, of Social Security benefits to the monthly "maint nce and support of the beneficiar[y]" children, *Porter*, 370 U.S. at 162, bears no relationship to the involun-

tary diversions by those outside the statutory scheme targeted by the anti-alienation provision. By contrast, respondents' plan to store up benefits or dedicate them entirely to other purposes, impervious to the beneficiaries' resulting complete dependency on public welfare to meet their current needs, defies congressional purpose.

The Washington Supreme Court repeatedly characterized petitioners as a creditor of the foster child (Pet. App. A19-A20, A28), and used that label to explain why it believed petitioners' payments for current maintenance were prohibited. But petitioners are not creditors of a beneficiary foster child. The child is under no legal obligation to pay for his own foster care. It is the parents, not the child, who bear such responsibility under Washington law. Wash. Rev. Code Ann. § 74.20A.010 (West 1993). Furthermore, petitioners do not provide their services "for consideration," and thus do not fall within the plain language of the Social Security Act's provision identifying the type of "creditor" that generally may not serve as a representative payee. 42 U.S.C. 405(j)(2)(C)(i)(III), 1383(a)(2)(B)(iii)(III).[7]

3. Petitioners' practice is consistent with this Court's precedent

Philpott v. *Essex County Welfare Board*, *supra*, and *Bennett* v. *Arkansas*, 485 U.S. 395 (1988) (per curiam), offer respondents no support. In *Philpott*, a state welfare board

[7] In any event, characterization of the States as creditors would not trigger the anti-alienation provision. The statute and regulations permit some "creditors" to serve as representative payees, particularly when those creditors are responsible for providing the beneficiary's current needs and maintenance on a daily basis. See 42 U.S.C. 405(j)(2)(C)(iii)(II), 1383(a)(2)(B)(v)(I) (legal guardian or legal representative of beneficiary); cf. 42 U.S.C. 405(j)(2)(C)(iii)(III), 1383(a)(2)(B)(v)(III) ("a facility that is licensed or certified as a care facility"). Further, it is generally appropriate for a representative payee to apply Social Security funds to discharge a debt "if the current and reasonably foreseeable needs of the beneficiary are met." 20 C.F.R. 404.2040(d), 416.640(d).

(which was not a representative payee) "sued to reach the bank account" of a welfare recipient who had promised to reimburse the board for any benefits received. 409 U.S. at 415. This Court held that the lawsuit fell within the plain meaning of the anti-alienation provision because it amounted to an indisputable use of "legal process" to compel an involuntary surrender of benefits to satisfy a debt. *Id.* at 415-416. The Washington Supreme Court seized upon (Pet. App. A20, A29) this Court's statement that the anti-alienation provision "imposes a broad bar against the use of any legal process to reach all social security benefits." *Philpott*, 409 U.S. at 417. The very next sentence of this Court's opinion makes clear, however, that the reference to "broad" coverage referred, not to an expansive construction of "legal process," but to ensuring the provision's application to "all claimants, including a State," who invoke such legal processes. *Ibid.* This Court simply refused to carve out an exception to the plain language that would permit certain creditors to apply traditional legal processes to seize benefits. Likewise, in *Bennett*, Arkansas (which was not a representative payee) sought "to attach" Social Security benefits paid to prison inmates by "fil[ing] separate actions in state court." 485 U.S. at 396. This Court held that the anti-alienation provision "unambiguously rule[d] out" that "attempt to attach Social Security benefits." *Id.* at 397. The Court once again declined to imply an exception from explicit language just because the State "provided the recipient with 'care and maintenance.'" *Ibid.*

But this Court's straightforward refusal in *Philpott* and *Bennett* to imply an exception to conduct falling squarely *within* the statutory text gives no license to courts to expand the anti-alienation provision to practices that fall far beyond any ordinary understanding of the text and that are specifically permitted by the Act's representative payee provision.

Moreover, the anti-alienation provision is designed to guard against the self-interested diversion of benefits to meet a creditor's own needs, which could "depriv[e] and deplet[e]" the beneficiary's very "means of subsistence." *Rose*, 481 U.S. at 630 (quoting S. Rep. No. 1243, 94th Cong., 2d Sess. 147-148 (1976)). But a representative payee, unlike a creditor, must use Social Security payments "for the use and benefit of the beneficiary," in the manner and for the purposes that the payee determines "to be in the best interests of the beneficiary." 20 C.F.R. 404.2035(a), 416.635(a). Further, the payee may use the benefits to discharge a debt if, and only if, "the current and reasonably foreseeable needs of the beneficiary are met" first. 20 C.F.R. 404.2040(d), 416.640(d). Also, representative payees (including state agencies and officials like petitioners) are appointed only after an individualized investigation by the Social Security Administration that examines the applicant's history, commitment to the child, and ability to manage the benefits properly and in the best interests of the child. 42 U.S.C. 405(j)(2)(A) and (B), 1383(a)(2)(B)(i) and (ii); 20 C.F.R. 404.2020, 416.620. The Administration will *not* "routinely appoint the social agency as payee just because a child is in foster care," but will instead choose the payee that "will serve the best interests of the beneficiary." Social Security Admin., Office of Program Benefits, *Policy Instruction GS 01-00-OPB* at 1 (Mar. 29, 2000).

The fact that one appropriate use of the funds for the benefit of the beneficiary—discharging current needs—coincides with an expense the payee would otherwise bear does not change the analysis. That ancillary benefit to the representative payee does not alter the fact that the beneficiary's current and foreseeable needs have been satisfied, and the core purpose of the Social Security benefits has been effectuated.[8]

4. Labeling petitioners' practice a "reimbursement" is immaterial

The Washington Supreme Court placed great weight (*e.g.*, Pet. App. A19, A28) on its characterization of petitioners' conduct as "reimburs[ing]" itself. In so holding, the court completely disregarded the district court's uncontested factual finding that the "reimbursement" takes place "only in the accounting sense" of signifying that petitioners "must expend the money up-front" before they claim the federal funds. *Id.* at A61. In other words, petitioners apply a foster child's benefits only to expenses that were actually incurred on his or her behalf. It is difficult to see how the beneficiary's interests would be better served by a scheme that applied the money in anticipation of hypothesized expenditures and, indeed, in advance of even knowing if the child will spend a full month in foster care.

Furthermore, if such "reimbursements" offended the Social Security Act, then legions of representative payees would be disqualified. Because Title II benefits are disbursed with a one-month time lag (*i.e.*, January's benefits are issued in early February), see POMS GN 02401.001, private payees as well as public ones often expend funds in advance to meet a beneficiary's needs and then reimburse themselves for the expense when the benefit check arrives. Under the

---

[8] See *Mason*, 280 F.3d at 792-794 (state hospitals, as representative payees, may withdraw Social Security benefit payments from beneficiaries' trust accounts to pay for institutional costs); *King* v. *Schafer*, 940 F.2d 1182 (8th Cir. 1991) (state mental health institutions, as representative payees, may apply Social Security benefits to patients' monthly charges for care and treatment), cert. denied, 502 U.S. 1095 (1992); *C.G.A.* v. *State*, 824 P.2d 1364, 1368-1369 & n.14 (Alaska 1992) (State, as representative payee, may devote Social Security benefits to authorized expenditures, including foster care); *Econolo* v. *Division of Reimbursements of the Dep't of Health & Mental Hygiene*, 769 A.2d 296, 309 (Md. Ct. Spec. App. 2001).

Washington Supreme Court's cramped view of proper expenditures, a parent serving as payee could not buy clothes for her child on January 20th and then reimburse herself for that expense when the benefit check arrives two weeks later. The regulations, however, anticipate such indirect payments for current maintenance items, because they define "current maintenance" as the "*cost incurred in obtaining* food, shelter, clothing, medical care, and personal comfort items." 20 C.F.R. 404.2040(a), 416.640(a) (emphasis added), rather than the direct provision of those items. Therefore, there simply is no basis in law or logic, let alone the practical functioning of this nationwide benefit program, for respondents' position (Br. in Opp. 26 n.14) that a permissible "direct expenditure" of funds will be transmogrified into a prohibited use of funds if, for accounting purposes, it briefly "takes on the nature of a debt."

Respondents' position, moreover, is one of empty formalism. The anti-alienation provision would not bar petitioners from first paying the foster parent for the child's maintenance, in the amount of the Social Security benefits, and then separately reducing the State's monthly foster care payment to the family by that same amount. See, *e.g.*, *Sullivan* v. *Stroop*, 496 U.S. 478 (1990) (Title II benefits may be counted to reduce amount of benefits provided under the Aid to Families with Dependent Children program). The end result of such a scheme for the beneficiary would be the same—the foster parent would, of necessity, apply the amount of the Social Security benefits towards the cost of current maintenance. The financial effect on the State also would be the same—the amount of its own funds expended on current maintenance would be directly reduced by the amount of the Social Security benefits.

Petitioners' "reimbursement" method does, however, have significant advantages for the administration of the Social Security program. Their method (1) guarantees that

the funds are expended for the use and benefit of the foster child; (2) allows the representative payee, who owes an allegiance to the beneficiary's interests, to maintain control over the money, rather than foster parents, who have not been vetted by the Social Security Administration and who might change during the course of a month; (3) increases the opportunity for funds to be expended on special needs, because petitioners are institutionally positioned to absorb the cost of such additional expenses on top of routine monthly maintenance costs, whereas most foster parents may be unable or unwilling to bear the additional cost; and (4) allows for more accurate documentation of exactly how the Social Security funds were expended. Given the substantial advantages of petitioners' approach, there is no reason to construe the Act to prohibit it.

In conclusion, there can be little doubt that the Social Security Act's representative payee provisions permit a payee to apply Social Security benefits to the cost of the beneficiary's current needs and maintenance. And nothing in the anti-alienation provision prohibits petitioners, as representative payee, from doing so. The root of respondents' objection to petitioners' practice, instead, is a fundamental disagreement over whether a payment for current needs, which is defined by regulation as being "for the use and benefit" of the beneficiary, is also in that beneficiary's "best interests." 20 C.F.R. 404.2035(a), 416.635(a). The Commissioner has made clear that it is. And that position makes sense—parents as representative payees make the same decision every day, without any question that they are attending to their children's best interests by providing a home, food, and clothing.

Beyond that, the regulations expressly leave the choice as to which permissible expenditures are in the beneficiary's "best interests" (once current needs are satisfied) to the duly appointed and authorized representative payee, whether

that payee is a parent or a state agency. See 20 C.F.R. 404.2035(a), 416.635(a) (both: funds may be used for purposes that "he or she determines * * * to be in the best interests of the beneficiary"). The anti-alienation provision is not a tool for second-guessing the legally permissible choices and judgments of each of the more than 4.2 million representative payees who administer Social Security benefits to meet the needs of more than 6 million beneficiaries. Monitoring the misuse or abuse of a beneficiary's funds by a representative payee is the job of the Commissioner, who has established an administrative mechanism for policing such violations. 42 U.S.C. 405(j)(1)(A), 1383(a)(2)(A)(iii); POMS GN 00604.000 *et seq.* Courts and that administrative mechanism would be overwhelmed if they assumed the task not just of policing legally impermissible expenditures of funds, but of superintending, under the "best interests" rubric, the discretionary choices among legally permissible alternatives for meeting beneficiaries' needs that are made every day by the millions of representative payees in each of the fifty States.

CONCLUSION

The judgment of the Washington Supreme Court should be reversed.

Respectfully submitted.

THEODORE B. OLSON
Solicitor General
ROBERT D. MCCALLUM, JR.
Assistant Attorney General
EDWIN S. KNEEDLER
Deputy Solicitor General
PATRICIA A. MILLETT
Assistant to the Solicitor General
WILLIAM KANTER
JONATHAN H. LEVY
Attorneys

AUGUST 2002

(13)

Supreme Court, U.S.
FILED
OCT 4 2002
OFFICE OF THE CLERK

No. 01-1420

IN THE

Supreme Court of the United States

WASHINGTON STATE DEPARTMENT OF SOCIAL & HEALTH SERVICES., ET AL.,
Petitioners,
v.

GUARDIANSHIP ESTATE OF DANNY KEFFELER, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF FOR THE JUVENILE LAW CENTER & THE NATIONAL CENTER FOR YOUTH LAW AS *AMICI CURIAE*

MARSHA L. LEVICK
Counsel of Record
KATHERINE TURNER
JENNIFER POKEMPNER
Juvenile Law Center
1315 Walnut Street, 4th Flr.
Philadelphia, PA 19107
(215) 625-0551

PATRICK GARDNER
REBECCA GUDEMAN
Counsel for Amici Curiae
National Center for Youth Law
405 14th Street, 15th Flr.
Oakland, CA 94612
(510) 835-8098

IN SUPPORT OF RESPONDENTS

BEST AVAILABLE COPY

37 pp

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES v

INTEREST OF THE *AMICI* 1

SUMMARY OF ARGUMENT 2

ARGUMENT 3

I. TITLE II AND TITLE XVI OF THE SOCIAL SECURITY ACT CREATED BENEFITS FOR DISABLED CHILDREN AND THE CHILDREN OF DISABLED ADULTS TO ADDRESS THE SPECIAL NEEDS OF THESE TWO GROUPS 4

II. WASHINGTON'S STATUTORY SCHEME STRIPS DSHS OF DISCRETION TO USE A CHILD'S SOCIAL SECURITY BENEFITS TO SERVE HIS OR HER INDIVIDUAL BEST INTERESTS, IN VIOLATION OF FEDERAL LAW 8

A. The Representative Payee Must Make an Individualized Inquiry into the Child's Best Interests 8

B. Washington Law Precludes the Exercise of Discretion That is Needed to Conduct an Individualized Determination of the Child's Best Interests and Medically Necessary Services 11

C. DSHS's Implementation of the Cost Recovery Scheme Prevents DSHS From Carrying Out its General Fiduciary Duty Under the Social Security Act 14

III. WASHINGTON'S COST RECOVERY LAWS VIOLATE THE SUPREMACY CLAUSE BECAUSE THEY STAND AS AN OBSTACLE TO THE ACCOMPLISHMENT OF THE FULL PURPOSES AND OBJECTIVES OF CONGRESS 16

IV. WASHINGTON'S COST RECOVERY POLICIES GIVE ELIGIBLE CHILDREN NO BENEFIT WHEN THE STATE SERVES AS THEIR REPRESENTATIVE PAYEE 18

A. Washington has Independent Federal and State Statutory Duties to Assess, Protect, Care For and Educate All Foster Children 19

1. Washington has a federally mandated duty to provide for a foster child's best interests, including special needs 20

2. Washington has a federally mandated duty to identify, assess and treat disabled children 21

a. Washington has a federally mandated duty to identify, assess and treat all foster children under Medicaid's EPSDT program 21

b. Washington has a federally mandated duty to identify, assess and treat all disabled children's educational needs under IDEA 22

3. Washington has other reasons to apply for social security on behalf of foster children 24

B. Washington has Difficulty Meeting the Basic Needs of Foster Children 25

C. Washington Policies Put the Individual Entitlements of the State's Neediest Children to Unauthorized Uses 26

1. Washington compensates itself as representative payee in violation of federal and state policy 26

2. Washington's cost recovery policy improperly transforms private entitlements into a public funding stream 27

CONCLUSION 29

TABLE OF AUTHORITIES

FEDERAL CASES

Page

Boggs v. Boggs, 520 U.S. 833 (1997) 17

Hines v. Davidowitz, 312 U.S. 53 (1941) 16

King v. Schafer, 940 F.2d 1182 (8th Cir.1991) 7

Mason v. Sybinski, 280 F.3d 778 (7th Cir. 2002) 7

Mathews v. Castro, 429 U.S. 181(1976) 4

Pacific Gas & Electric Co. v. State Energy Resources Conservation and Development Comm'n, 461 U.S. 190 (1983) 3

Sullivan v. Zebley, 493 U.S. 521 (1990) 5

STATE CASES

Braam v. State of Wash. Dep't. of Soc. & Health Servs., No. 98-2-01570-1 (Whatcom County Super. Ct., May 31, 2001) 26

Jarvis v. Bowen, 1986 Unempl. Ins. Rep. (CCH) ¶ 83,379 (D. Minn. 1986) 16

Keffeler v. State of Washington Dep't. of Soc. & Health Servs., 32 P.3d 267 (Wash. 2001) ..... *passim*

Willingham v. McDonald, No. 96 CO 00120, (Cook County, Ill., Sept. 2000) 3

FEDERAL STATUTES

U.S.C.A. Const. Art. 6, cl. 2. ..... 2, 16

20 U.S.C. § 1400 23

20 U.S.C. § 1414 23

42 U.S.C. § 402 4

42 U.S.C. § 405 ..... 10, 26

42 U.S.C. § 407 ..... 10, 11

42 U.S.C. § 670 *et. seq.* 20

42 U.S.C. § 1382a 13

42 U.S.C. § 1382c 9

42 U.S.C. § 1383 ..... 6, 10, 26

42 U.S.C. § 1396a 21, 22

42 U.S.C. § 1396d 21, 22

42 U.S.C. § 1396s 22

Pub. L. No. 105-89 20

FEDERAL REGULATIONS

20 C.F.R. § 404.2020 ..... 5, 8

20 C.F.R. § 404.2021 8

20 C.F.R. § 404.2035 ..... 9, 16

20 C.F.R. § 404.2040 ..... 7, 11, 12

20 C.F.R. § 416.620 8

20 C.F.R. § 416.621 8

20 C.F.R. § 416.635 ..... 6, 9, 16

20 C.F.R. § 416.640 ..... 6, 11

20 C.F.R. § 416.994a 6

34 C.F.R. § 300.121 23

STATE STATUTES

Wash. Rev. Code § 74.13.010 21

Wash. Rev. Code § 74.13.031 ..... 12, 20

Wash. Rev. Code § 74.13.060 ..... 14, 27

Wash. Rev. Code § 74.14C.005 25

Wash. Rev. Code § 74.20.010 ..... 2, 11, 14

STATE REGULATIONS

Wash. Admin. Code § 388-25-0120 ..... 11, 12, 14

Wash. Admin. Code § 388-25-0170 14

Wash. Admin. Code § 388-25-0210 2

Wash. Admin. Code § 392-172-100 ..... 23, 24

MISCELLANEOUS

H.R. Rep. No. 92-231, pp. 146-147 (1971), *reprinted in* 1972 U.S.C.C.A.N. 4989. ..... 5, 6, 18

Social Security Administration, POMS Manual,
§ SI00830.170 13
§ SI00830.410 13

INTEREST OF THE *AMICI*[1]

Juvenile Law Center ("JLC") is one of the oldest legal service firms for children in the United States, founded in 1975 to advance the rights and well being of children in jeopardy. JLC pays particular attention to the needs of children who come within the purview of public agencies – for example, abused or neglected children placed in foster homes, delinquent youth sent to residential treatment facilities or adult prisons, or children in placement with specialized services needs. JLC works to ensure children are treated fairly by systems that are supposed to help them, and that children receive the treatment and services that these systems are supposed to provide. We believe the juvenile justice and child welfare systems should be used only when necessary, and work to ensure that the children and families served by those systems receive adequate education, and physical and mental health care. JLC is a non-profit public interest firm. Legal services are provided at no cost to our clients.

The National Center for Youth Law seeks to help children escape from poverty and to use the law to protect children from the debilitating effects that poverty has on them. Since 1970, we have worked to improve the lives of poor children nationwide. Throughout our work, we devote particular attention to those children who are at the greatest risk, including children of color, disabled children, abused and neglected children, and adolescents. We provide direct representation of children and adolescents through impact

---

[1] *Amici* file this brief with the consent of all parties. Letters of consent have been lodged with the Clerk of Court. No counsel for a party authored this brief in whole or in part. No person, entity, other than *amici*, their members, or their counsel made a monetary contribution for the preparation of this submission.

litigation; legislative and administrative advocacy at the national and state levels; and training, technical assistance, and support for child advocates, social services and health care providers, and other professionals who work with children and youth. As advocates for children: we protect abused and neglected children through work with foster parents and others striving to reform state child welfare systems; we work to expand access to federally funded health care services to which low-income children and youth are entitled; we strive to secure public benefits to meet the special needs of children and youth, including TANF benefits for teenagers, and SSI benefits for disabled children and youth; we work to improve California's child support collection program through public information and advocacy; and we work to combat the tendency to respond to the problems of adolescents in a manner that is almost exclusively punitive.

Amici believe that youth in the foster care system, particularly those with special needs, are entitled to treatment that is equitable and ensures and promotes their well-being. *Amici* urge the Court to affirm the Supreme Court of Washington's ruling that Washington State's reimbursement provision violates the Supremacy Clause and the Social Security Act.

SUMMARY OF ARGUMENT

DSHS's implementation of the cost recovery mandates of Wash. Rev. Code § 74.20.010 and Wash. Admin. Code § 388-25-0210 violates the Supremacy Clause of the U.S. Constitution, U.S.C.A. Const. Art. 6, cl. 2. The cost recovery provision conflicts with the Social Security Act and related regulations which require that: 1) the representative payee disburse the beneficiary's Supplemental Security Income benefit or Social Security benefit based upon the best interests

of the beneficiary and 2) the representative payee act as a fiduciary to determine the beneficiary's best interests based on an individualized determination. In addition, a Supremacy Clause violation exists because Washington's cost recovery laws stand as an obstacle to Congress's goal that Supplemental Security Income ("SSI") meet the needs of youth who are cumulatively disadvantaged by poverty and disability. Accordingly, DSHS should be ordered to amend its policies and procedures to comply with federal law.[2] *See Pacific Gas & Electric Co. v. State Energy Resources Conservation and Development Comm'n*, 461 U.S. 190, 204 (1983)(holding that state law is preempted if it actually conflicts with federal law).

ARGUMENT

This appeal concerns economically disadvantaged and disabled children entrusted to the care of a state agency through its foster care system – among the neediest children in America. At issue is whether the state of Washington, in its representative capacity as recipient of these children's federal insurance benefits under Title II and Title XVI of the Social Security Act, may lawfully allocate the entire benefit amount to the state treasury to reduce its financial burden of maintaining its state foster care system – where the Social

[2]Policies enacted by the Illinois Department of Children and Family Services pursuant to the settlement agreement in *Willingham v. McDonald*, No. 96 CO 00120, (Cook County, Ill., Sept. 2000), demonstrate how states may properly serve as representative payees and also comply with the mandates of the Social Security Act. These policies were put in place to ensure that the child's benefits were managed in a way consistent with the best interests standard rather than the state's financial interest. Such policies do not preclude the state from seeking some reimbursement for the cost of foster care, but do make clear that a beneficiary's special needs must be prioritized in determining how benefits will be used.

Security Act mandates that the representative payee spend these funds in accordance with the children's best interests.

Amici submit that Washington's self-reimbursement practice, mandated by Washington law, violates both express provisions of the Social Security Act as well as the policy and goals of the Act. By effectively balancing the state's foster care budget on the backs of poor and disabled children, Washington subverts the intent and mandate of Congress. Washington's statutory scheme violates the Supremacy Clause of the United States Constitution.

I. TITLE II AND TITLE XVI OF THE SOCIAL SECURITY ACT CREATED BENEFITS FOR DISABLED CHILDREN AND THE CHILDREN OF DISABLED ADULTS TO ADDRESS THE SPECIAL NEEDS OF THESE TWO GROUPS

In 1935, Congress created Federal Old-Age, Survivors, and Disability Insurance Benefits, designated as Title II of the Social Security Act. In 1939, Congress extended Title II insurance benefits to cover children with a parent who is currently entitled to old-age or disability insurance and children with a parent who died with full or current eligibility for such insurance benefits. *See* 42 U.S.C. § 402(d)(1). The Title II program aims to prevent economic hazards created by a wage earner's involuntary, premature retirement. *See Mathews v. de Castro*, 429 U.S. 181, 186 n.6 (1976). Thus, the insurance benefits replace parental income no longer available to the child due to the disability of a parent, old-age, or death. Eligibility is not based on a determination that the child has a disability.

The Social Security regulations consider current maintenance an appropriate use of these insurance benefits. 20

C.F.R. § 404.2020(a)(1). Current maintenance includes not only food, shelter, and clothing, but *medical care*, and personal items as well. *See id.*

Title XVI is a public assistance program based on economic need and a finding of individual disability. Congress amended the Social Security Act in 1972 to create a single national program that would provide cash assistance to those unable to sustain the costs of essentials such as food, clothing, and shelter, due to an inability to engage in substantially gainful employment. *See* H.R. Rep. No. 92-231, pp. 146-147 (1971), *reprinted in* 1972 U.S.C.C.A.N. 4989, 5133 pt. 2. Like Title II, Title XVI restores lost income to would-be adult wage earners.

As the new statute took shape, Congress recognized another group of non-wage earners with serious unmet needs related to their disability: children. As Justice White has observed, this inclusion gave rise to "different purposes underlying the disability programs for the two groups." *Sullivan v. Zebley*, 493 U.S. 521, 546 (1990) (White, J., dissenting)(arguing that the Social Security Administration's approach to determining SSI eligibility for adults permissibly and logically differs from the eligibility standards for children because of Congress's separate aims in providing benefits to these two groups).

Congress carefully distinguished between adult SSI, which would provide basic care funds to support those unable to work, and child SSI, which would serve the preventative purpose of meeting the special needs of children doubly vulnerable by reasons of poverty and disability in order to promote successful transitions to adulthood. *See id.*

As Congress explained, the inclusion of children was

neither incidental nor a simple extension of benefits to a wider age demographic: "[D]isabled children who live in low-income households are certainly among *the most disadvantaged of all Americans* and they are *deserving* of special assistance in order to help them become self-supporting members of our society." H.R. Rep. No. 92-231, pt. 2, at 5133-34.

SSI's goal of addressing the special needs of disabled children is reflected in the duty of the payee to direct the funds to disability-related needs. Like Title II, Title XVI requires that a representative payee use the funds for current maintenance, including medical care not covered by Medicaid. *See* 20 C.F.R. § 416.640(a).

Indeed, a representative payee under Title XVI *must* obtain medical treatment for the child[3] and, under certain circumstances, must create a dedicated account to cover items such as education and services related to the child's impairment.[4] The recent creation of these dedicated account

[3]The Social Security Act requires that payees for SSI recipients ensure that the beneficiary is and has been receiving treatment to the extent considered medically necessary and available for the condition that was the basis for providing benefits. 20 C.F.R § 416.994a(i); 20 C.F.R. § 416.635.

[4]In addition to the best interests duty and the medical treatment requirement, Title XVI also obliges the representative payee of an individual under age eighteen who receives a lump-sum payment of past-due benefits that exceeds six times the amount of the monthly benefit to deposit this amount in a "dedicated account" in a financial institution. 42 U' S.C. § 1383(a)(2)(F)(i). The representative payee may also deposit any subsequent past due benefits into this account. 42 U.S.C. § 1383(a)(2)(F)(iii). The representative payee's discretion in the use of funds in a dedicated account is limited; the payee must use the funds only for allowable expenses related to the impairment of the individual, including education or job skills training, personal needs assistance, special equipment, housing modification, medical treatment, therapy or rehabilitation, or any other impairment-related item that the Commissioner deems appropriate. 42 U.S.C. § 1383(a)(2)(F)(ii)(II)(aa-gg).

provisions demonstrate Congress's continued effort to ensure that SSI funds allow a child to obtain the necessary resources that will improve his or her disabling condition. In fact, the dedicated account provisions came as a reaction to, and rejection of, the practice of DSHS and other state agencies to apply lump sum benefits to reimburse themselves for *past* care, contrary to the current maintenance responsibility of the representative payee.

Similarly, Title II Social Security regulations contemplate that a representative payee should conserve some of the beneficiary's funds in savings for reasonably foreseeable needs. In the example provided in 20 C.F.R. § 404.2040(a)(1), the payee sets aside $30 per month, presumably in an interest-bearing account. *See e.g., Mason v. Sybinski*, 280 F.3d 778, 791 (7th Cir. 2002)(The Seventh Circuit observed that the state representative payee took due notice of the individual needs of the beneficiary, saving for her personal use $100 of her monthly benefit of $618, even though the state's monthly costs of care were $7,170.); *King v. Schafer*, 940 F.2d 1182, 1184 (8th Cir. 1991)(The Eighth Circuit noted that the state representative payee automatically set aside $30 a month for the beneficiary's personal expenses and special needs. The Court emphasized that the state representative payee allowed beneficiaries to request that additional amounts be set aside from their benefits according to needs, and that "such requests have never been denied.").

II. WASHINGTON'S STATUTORY SCHEME STRIPS DSHS OF DISCRETION TO USE A CHILD'S SOCIAL SECURITY BENEFITS TO SERVE HIS OR HER INDIVIDUAL BEST INTERESTS, IN VIOLATION OF FEDERAL LAW

A. The Representative Payee Must Make an Individualized Inquiry into the Child's Best Interests

It is routine for Social Security and SSI recipients under age 18 to have payees appointed to receive benefits on their behalf. The payee has a distinct duty both to serve the best interests of the beneficiary and to uphold Congress's purposes in granting benefits under Title II and Title XVI of the Social Security Act. The Social Security Administration's ("SSA") "primary concern is to select the payee who will best serve the beneficiary's interests." 20 C.F.R. § 404.2021; 20 C.F.R. § 416.621. SSA's order of preference in selecting a payee reflects this concern, favoring potential payees who are likely to have personal knowledge of the child's best interests. *See* 20 C.F.R. § 404.2020(e); 20 C.F.R. § 416.620(e). However, when necessary, SSA will approve a social agency such as DSHS as representative payee.[5] This is done most often on behalf of foster children.

After the payee is appointed, federal law requires that a duly appointed representative payee:

> [u]se payments he or she receives *only* for the use and benefit of the beneficiary in a manner and for the purposes he or she determines, under the guidelines in this subpart, to be in the best interests of the beneficiary [.]

20 C.F.R. § 404.2035(a); 20 C.F.R. § 416.635(a)(emphasis added).

In addition, for minor Title XVI recipients, the payee must:

> ensure that the beneficiary is and has been receiving treatment to the extent considered medically necessary and available for the condition that was the basis for providing benefits [.]

20 C.F.R. § 416.635(e).[6]

The representative payee must make an individualized assessment of each child's needs in order to make the best interests determination that is required under both Titles of the Social Security Act. The ability of the representative payee to exercise discretion in its management of a child's Social Security benefits is fundamental to the overarching justification of the payee system. While the Commissioner

[5] At the formation of the Keffeler class, of the 1,480 Social Security beneficiaries under DSHS care, the SSA approved DSHS as representative payee for 1,411 of these children. *See Keffeler v. State of Washington Dep't. of Soc. & Health Servs.*, 32 P.3d 267, 271 (Wash. 2001).

[6] The payee's disbursement of the benefit must be guided by this duty to assess what services are medically necessary for this particular child. To assess a child's progress toward self-supporting adulthood and the improvement of the child's impairment, the SSA must conduct a review of the child's continued eligibility. *See* 42 U.S.C. § 1382c(a)(3)(H)(ii)(I). At the time of review, the representative payee must present evidence that it has used the child's funds to obtain treatment for the disabling condition that is the basis of benefits. *See* 42 U.S.C. § 1382c(a)(3)(H)(ii)(I). Similarly, Social Security regulations require that the representative payee "ensure that the beneficiary is and has been receiving treatment to the extent considered medically necessary...." 20 C.F.R. § 416.635(e).

must make a threshold determination that the representative will act in the child's best interests, this determination does not in any way relieve that payee of their ongoing duty to ensure that benefits are disbursed in a way that serves that particular child's best interests.

Moreover, because Social Security funds are intended to benefit only the entitled individual, and individual needs vary immensely, a representative payee must enjoy some degree of autonomy and discretion to assess the individual beneficiary's needs and distribute his or her benefits accordingly. This is particularly true of SSI: a youth is eligible not only based on economic need, but also because of an individual determination of disability.

Additionally, though Congress requires the Social Security Administration to establish accountability monitoring of representative payees, it does not authorize the SSA to dictate specifically how the beneficiary must use the funds. *See* 42 U.S.C. § 405(j)(3) (requiring the Commissioner of Social Security to obtain an annual accounting from individual payees and to establish a system of monitoring for State institutional payees; and authorizing the Commissioner to request an accounting upon suspicion of misuse); *see also* 42 U.S.C. § 1383(a)(2)(C). In other words, accountability monitoring respects the payee's discretion to determine the best interests of the child and to use the benefits accordingly. The discretion of the representative payee is bounded by the best interests standard and the purpose of the benefit.[7]

[7] Where Congress has provided statutory restrictions on the use of Social Security funds, the best interests requirement motivates all restrictions. For example, the anti-alienation provision of 42 U.S.C. § 407(a) that has received great attention in various stages of the *Keffeler* litigation, functions to protect the exclusive best interests requirement. The anti-alienation provision essentially prevents other interests from intruding upon the ability of the beneficiary or the representative payee to focus exclusively on meeting the beneficiary's current and foreseeable needs. Notably, the other interests that 42 U.S.C. § 407(a) seeks to exclude from claiming a stake in the beneficiary's funds are not just those interests that may be considered minor concerns from a public welfare perspective. Section 407(a) similarly prohibits both the corporate consumer credit lender and the needy child entitled to support from the beneficiary from using legal process to obtain satisfaction of the beneficiary's indebtedness. This contrast highlights the extent to which Social Security funds are fundamentally directed to the exclusive interest of the beneficiary. The needs and interests of the beneficiary's creditors and legal dependents are secondary, and the representative payee cannot address them until it has satisfied the current and reasonably foreseeable needs of the beneficiary. *See* 20 C.F.R. § 404.2040(c); 20 C.F.R. § 404.2040(d); 20 C.F.R. § 416.640(d).

B. Washington Law Precludes the Exercise of Discretion That is Needed to Conduct an Individualized Determination of the Child's Best Interests and Medically Necessary Services

Under Washington law, DSHS must use any income it receives on behalf of the child to reduce the burden on the state. Wash. Rev. Code § 74.20.010 (making it the responsibility of DSHS to "conserve the expenditure of public assistance funds, whenever possible, in order that such funds shall not be expended if there are private funds available or which can be made available by judicial process or otherwise ...").

By mandating that all funds be used to reimburse the state for the cost of foster care, Washington law thus affords DSHS no discretion to determine how benefits may serve Washington's youths' best interests or cover medically necessary services for SSI recipients. Because Washington law prevents DSHS from exercising this critical autonomy and individualized decision-making, it violates federal law. *See* Wash. Rev. Code § 74.20.010; Wash. Admin. Code § 388-25-0120.

While the state clearly has many duties to its citizens, it has the duty to serve *only* the best interests of the child when acting in its capacity as representative payee under federal law. By mandating that the fiscal interest of the state be a consideration in how the child's individual benefit is disbursed, DSHS is directed to exhaust a child's funds to pay for food, clothing, and shelter costs — items provided by the State regardless of reimbursement.[8] This results in a failure to consider the particular needs of Title II and SSI recipients, including the costs of medical and psychological treatment[9] not

[8] Under state law, Washington has a basic duty to "develop, administer, supervise, and monitor a coordinated and comprehensive plan that establishes, aids, and strengthens services for the protection and care of runaway, dependent, and neglected children." Wash. Rev. Code § 74.13.031(1).

[9] Under Washington law, the foster care stipend paid by DSHS to foster caregivers covers room, board, a clothing allowance, and personal incidentals. *See* Wash. Admin. Code § 388-25-0120. A foster care stipend does not cover all current maintenance needs; conspicuously, it leaves out medical expenses. Though foster children qualify for Medicaid, many medical expenses, such as certain mental health services, medical equipment, and orthodontics, are not covered by this basic health insurance. Therefore, in order to meet all current maintenance needs, DSHS cannot automatically reimburse itself for the entire amount of the child's benefit, but must first assess the child's unmet outstanding current maintenance and exercise discretion to determine the allocation that matches the best interests of the child.

Because DSHS has the duty to act in the best interests of the child, the unmet need of uncovered medical care should take priority over the met needs of food, clothing, shelter, and personal items. An example provided in the federal regulations illustrates this order of priority: the beneficiary's need for new shoes comes first over reimbursement to the agency that provides his basic care. *See* 20 C.F.R. § 404.2040(2)(b). This regulation demonstrates Congress's "clear intent that special needs of the beneficiary should take precedence over...reimbursement for care." *Keffeler*, 32 P.3d at 280.

covered by Medicaid.[10]

[10] In the many cases where Washington does use a child's entire benefit to reimburse itself, the benefit becomes a windfall to the state. When a child qualified for SSI also qualifies for Title IV-E foster care assistance, DSHS must make a choice between these sources of federal resources. Though a child can simultaneously maintain eligibility for both Title IV-E and Title XVI, Title IV-E dollars count as "income based on need" ("IBON"), which reduces the amount of the child's SSI benefit dollar-for-dollar. *See* 42 U.S.C.§ 1382a(a)(2) (counting non-exempted unearned income in income determination for SSI eligibility); *see also* Social Security Administration's POMS Manual § SI00830.170, available at *http://policy.ssa.gov/poms.nsf/lnx/0500830170* (describing types of income considered IBON); *id.* at § SI00830.410, available at *http://policy.ssa.gov/poms.nsf/lnx.0500830410* (explaining how SSA calculates Title IV-E payments as IBON against the amount of a beneficiary's SSI benefit). Therefore, if a child previously received the maximum benefit of $545 and Washington applies for Title IV-E dollars on the child's behalf, posting $200 itself and receiving a $200 match from the federal government (for a total $400 foster care stipend paid to the foster family), Washington would pay $200, receive $200 in federal funds, and have $145 of the child's funds to manage as representative payee. Alternatively, Washington may decide to refrain from receiving Title IV-E in order to maintain the child's SSI benefit level at $545. Under this scheme, Washington obtains more federal funding for itself by taking the child's entire benefit for reimbursement, and avoiding having to match $200 in order to receive federal funding. Therefore, by taking all of a child's money for the state as representative payee of SSI dollars, Washington attains $545, with no obligation to put up anything, whereas if it applied for Title IV-E, it could obtain only between $200-$345 for the state. The catch, of course, is that by deciding to rely on the child's SSI funding in order to increase the total funding transferred from federal to Washington State control, Washington places itself in the inappropriate position of *expecting* to spend the child's entire benefit to cover its cost of the foster care stipend, before considering whether reimbursing itself is in the child's best interests — whether the child has other pressing needs that will not otherwise be met under the state's vague duty to provide child welfare.

C. DSHS's Implementation of the Cost Recovery Scheme Prevents DSHS From Carrying Out its General Fiduciary Duty Under the Social Security Act

As set forth above, Washington law mandates that DSHS conserve the expenditure of state funds for foster care whenever other funding sources are available. Wash. Rev. Code § 74.20.010. While DSHS "*may* disburse" a child's funds for personal needs as the Secretary deems "proper and necessary," Wash. Rev. Code § 74.13.060 (emphasis added), no comparable state mandate ensures that funds available to the child under the Social Security Act first be used to meet the child's outstanding needs, over and above basic foster care before reimbursement. Nor does Washington exempt any portion of the benefit from the cost recovery scheme.[11]

DSHS employs an automatic self-reimbursement procedure: its Trust Fund Unit, which receives the child's monthly check from the Social Security Administration, immediately deposits the child's entire benefit amount into the

[11] Outstanding needs may include any of the several items that foster parents or institutional foster homes are not required to provide. The foster care stipend gives foster care givers the funds and the responsibility to provide room and board, clothing, and personal incidentals. *See* Wash. Admin. Code § 388-25-0120(1). Needs not covered by this amount are innumerable, but to name a few: medical needs not covered by Medicaid, home respite care, educational materials, home modifications, psychological treatment and evaluation, and parent-child visitation services. DSHS is not required to provide any of these services, and only does so "subject to the availability of funds." Wash. Admin. Code § 388-25-0170(1). As DSHS admittedly faces a budget crisis, (*see* Appellant's Application to Recall and Stay the Mandate of the Supreme Court of Washington Pending Cert. at 18, *Keffeler* (No. 01-1420)), it is likely in present circumstances that disabled foster children face multiple unmet needs, despite the fact that the federal government entitles these children to SSI funds precisely so they do not have to face this grave situation of unmet need.

Foster Care Trust Fund Account. *See Keffeler*, 32 P.3d at 272. The Trust Fund Unit is a division of the Office of Financial Recovery, whose primary responsibility is to pursue the state's fiscal interest by reducing taxpayer burden through recovery of funds spent by DSHS from outside federal and private sources. *See id.* at 276 n.13.

Thus, the same Trust Fund Unit that serves as the representative payee of a child's Title II or SSI benefits is also the *principal advocate of the fiscal interest of Washington.* As the trial court found, "*[f]or the sole purpose of obtaining reimbursement for foster care costs*, DSHS applies to the Social Security Administration to be appointed representative payee for all children in foster care who are eligible for social security benefits." *Id.* at 274 n.11 (*quoting* Clerk's Papers (CP) at 623 (Trial Court's Mem. Op. (Sept. 29, 1998) at 3)(emphasis in original)). Indeed, Washington reduces its request for appropriations under the state budget for child welfare expenses based upon the amount of funds it expects to receive as payee for child beneficiaries of Title II and SSI.[12]

[12] Deposits by the Trust Fund Unit into an individual subsidiary account to cover the child's current unmet needs or reasonably foreseeable needs are a rare exception to its automatic cost recovery scheme. Essentially, the availability of a child's Social Security funds to serve his or her outstanding needs is entirely dependent on the initiative and extra-ordinary effort of the child's social worker to navigate an unadvertised and convoluted process, and thereby halt the hurtling machine of cost recovery. In order to obtain a disbursement for special needs, the social worker must first learn through independent channels that such an option even exists for the child: DSHS makes no affirmative effort to inform the social worker of the possible availability of Social Security benefits to the child — funds that the federal government has granted individually and for the sole benefit of that child. *See* Resp't Br. in Opp'n at 27, *Keffeler* (No 01-1420). If the social worker is savvy enough to check for this funding, he or she must then file a form with the Children's Administration. The request must pass through two levels of approval, one within the Children's Administration and another within DSHS's Office of Financial Recovery, which has no contact with the child.

The special needs of a child under the care of DSHS are rarely met by his or her Social Security or SSI funds, though the federal government has explicitly provided these funds for the individual's sole use and benefit. *See* 20 C.F.R. § 404.2035(a); 20 C.F.R. § 416.635(a). In a random sampling of 48 accounts of children receiving Title II or Title XVI benefits, DSHS disbursed only 3% of the child's funds to meet the many needs not met by the stipend for basic foster care. Thirty-eight of the children in the sampling never received any of their own Social Security funds to meet their individual needs. In Danny Keffeler's case, DSHS used 100% of his $4,998 in Social Security benefits to reimburse itself. *See* Appendix to Resp't Br. in Opp'n at A-60 ¶, *Keffeler* (No. 01-1420).

By elevating the fiscal solvency of the state over the child's best interests, DSHS fails to meet the child's needs. This is contrary to the Social Security Act. *See Jarvis v. Bowen*, 1986 Unempl. Ins. Rep. (CCH) ¶ 83,379 (D. Minn. 1986)("The representative payee must remember that all expenditures must be in the best interests of the beneficiary, not the State of Minnesota.").

III. WASHINGTON'S COST RECOVERY LAWS VIOLATE THE SUPREMACY CLAUSE BECAUSE THEY STAND AS AN OBSTACLE TO THE ACCOMPLISHMENT OF THE FULL PURPOSES AND OBJECTIVES OF CONGRESS

A violation of the Supremacy Clause, U.S.C.A. Const. Art. 6, cl. 2., exists where state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). As discussed in Section I, the Social Security Act, its regulations, and its legislative history provide much guidance

with respect to Congress's purpose in establishing benefits for minors under Titles II and XVI of the Social Security Act. Washington's cost recovery laws, implemented to require full reimbursement of foster care costs without any consideration of the youths' special needs, undermine Congressional purpose.[13]

Congress intended that child SSI benefits be used to address the special needs of youth who are determined to be disabled under the high standard established in the Social Security Act. While discretion is given to the representative payee to determine what will serve the youth's best interests, Congress made clear the payee has a duty to meet the youth's treatment needs and make an individualized determination of how the beneficiary's special needs should be met.

At the formation of the *Keffeler* class, DSHS served as representative payee to 923 children receiving Supplemental Security Income under the Title XVI program. *Keffeler*, 32 P.3d at 271. In making this commitment to these children, DSHS undertook an essential role in realizing Congress's founding purpose for this program: to assist the most disadvantaged of all Americans in providing treatment for their impairments and disabilities and developing their abilities to

[13] *Cf. Boggs v. Boggs*, 520 U.S. 833, 841 (1997), where this Court held that a state law's frustration of Congress's goal under the Employee Retirement Income Security Act (ERISA) to ensure a stream of income to surviving spouses is enough to find the state law preempted under the conventional conflict preemption principles. *Id.* at 843 ("ERISA's solicitude for the economic security of surviving spouses would be undermined by allowing a predeceasing spouse's heirs and legatees to have a community property interest in the survivor's annuity."). Significantly, the Court focused on ERISA's detailed provisions designed to protect the beneficiary's income against non-beneficiary interests, including an anti-alienation provision and a requirement that a fiduciary "discharge his duties with respect to a plan solely in the interest of the participant and beneficiaries." *Id.* at 845.

become self-supporting adults. *See* H.R. Rep. No. 92-231, pt. 2, at 5133-34. Washington subverts Congress's goal of providing special assistance to our neediest children by substituting its own interest in cost recovery as the primary objective of its representative payeeship.

Likewise, Congress intended that Title II benefits be used in the child's best interests and based on an individualized consideration of the youth's special needs, which may exceed current maintenance. Thus, Washington law stands as an obstacle to Congress's goal of providing for the best interests of youth whose parents are disabled in its implementation of its cost recovery law.

IV. WASHINGTON'S COST RECOVERY POLICIES GIVE ELIGIBLE CHILDREN NO BENEFIT WHEN THE STATE SERVES AS THEIR REPRESENTATIVE PAYEE

The state of Washington and its *amici* maintain that the decision below, if sustained, would undermine the well-being of disabled children in foster care.[14] Underpinning the State's argument is an implicit trade-off: the state may use its authority as representative payee to re-pay itself for foster care expenses, and in return, it will provide essential services which would not otherwise be available to foster children. Stated another way, by pursuing its own interest, the state claims to indirectly serve the interests of abused and neglected children

[14] The brief of *amici* Children's Defense Fund, et al., ("CDF") notes, "...if it were not for the effort of these state agencies, the disabilities of many children might go unrecognized, and they would never be determined eligible for- or actually receive benefits. Simply put, many of these children have no relative or friend to apply for benefits or act as representative payee. The state agencies willingness to serve as payee is essential to these children receiving benefits." *Amici* Br. of CDF at 21.

in state care.

This trade-off is a bad bargain for poor children. It overlooks the fact that these needy children are entitled to the benefits for which the state is seeking payment. Additionally, the bargain typically gives them little, and often nothing, in return for forfeiting their entitlement. Finally, the policy violates the spirit and the letter of applicable law, in part by transforming individuals' private entitlements into a public funding stream.

A. Washington has Independent Federal and State Statutory Duties to Assess, Protect, Care For and Educate All Foster Children

The policy of trading-off individuals' social security benefits for child welfare services is premised on the notion that the state cannot, or will not, shoulder the burden of assessing foster children and applying for social security benefits on their behalf unless the state can recover its costs through the representative payee system.[15] This premise disregards the larger context within which the State cares for neglected and abused children.

Washington has a broad mandatory duty under federal and state laws to provide care, safety, health services, education,

[15] The court below, as well as the trial court, took a step further finding, "for the sole purpose of obtaining reimbursement for foster care costs, DSHS applies to the Social Security Administration to be appointed representative payee for all children in foster care who are eligible for social security benefits." *Keffeler*, 32 P.3d at 275 n.1. The Washington Supreme Court summarized the matter thus: "DSHS receives reimbursement for foster care only if it serves as a representative payee, and it only serves as representative payee so it can confiscate the child's money." *Id.* at 274-75.

and more to foster children. These services are owed to abused, neglected, and disabled children in state custody as a matter of right. They cannot be withheld based on a child's inability – or even unwillingness – to pay for them.

1. Washington has a federally mandated duty to provide for a foster child's best interests, including special needs

The preeminent duty owed abused and neglected children is to protect them from further harm and provide for their care. In 1980, Congress enacted the Adoption Assistance and Child Welfare Act ("AACWA"), establishing a new part to Title IV of the Social Security Act to provide foster care and adoption assistance to the states, for the purposes of improving the quality of care provided to foster children, reducing the number of children removed from their homes and placed in substitute care, returning children to the homes as soon as conditions permit, and facilitating adoption or other permanent placement for children who cannot be returned to their homes. 42 U.S.C. § 670-679b. In 1997, Congress passed the Adoption and Safe Families Act ("ASFA"), that amended AACWA to prioritize adoptions over family reunification. This clearly established that the child's health and safety is paramount in policy making. Pub.L. No. 105-89.

Washington has codified these federal policy goals as legal responsibilities. State law requires the Department to "[d]evelop, administer, supervise, and monitor a coordinated and comprehensive plan that establishes, aids, and strengthens services for the protection and care of runaway, dependent, or neglected children." Wash. Rev. Code § 74.13.031 ("Duties of the Department"). The purpose of these duties "is to safeguard, protect and contribute to the welfare of the children

of the state, through a comprehensive and coordinated program of public child welfare services providing for: social services and facilities for children who require guidance, care, control, protection, treatment or rehabilitation." Wash. Rev. Code § 74.13.010 ("Declaration of Purpose").

This duty includes the duty to identify and treat a child's special needs. This obligation exists regardless of whether or not the child welfare agency is fully reimbursed for care or regardless of the funding stream that provides the reimbursement; it is implicit in the agency's responsibility to provide for the safety and well-being of dependent children.

2. Washington has a federally mandated duty to identify, assess and treat disabled children

a. Washington has a federally mandated duty to identify, assess and treat all foster children under Medicaid's EPSDT program

In addition to its obligations to adequately care for abused and neglected youth under state and federal child welfare statutes, Washington has a duty to assess and treat eligible children under Title XIX of the Social Security Act, more commonly known as Medicaid. Foster children in Washington are eligible for Medicaid and its comprehensive child treatment and prevention program Early, Periodic, Screening, Diagnosis, and Treatment ("EPSDT"). *See* 42 U.S.C. §§ 1396a(a)(10)(A), 1396a(a)(43), 1396d(a)(4)(B), 1396d(r) (as added and amended by the Omnibus Budget Reconciliation Act of 1989). The program provides a comprehensive health screening, diagnosis and treatment regime for covered children.

Under EPSDT, four discrete types of assessments are provided at every screening: medical (physical and mental health), vision, hearing and dental, as well as immunizations and other preventative care. 42 U.S.C. §§1396a(a)(43), 1396a(a)(62), 1396d(r), 1396s (as added and amended by the Omnibus Budget Reconciliation Act of 1993). Covered children are statutorily required to be screened both at preset periodic intervals and whenever a problem is suspected. *See* 42 U.S.C. §§1396a(a)(43), 1396d(r).

Therefore, the foster children in the State of Washington's care must be routinely screened for physical and emotional defects under EPSDT. These regular, mandatory screenings are specifically designed to bring to light those disabilities that the Petitioner claims "might go unrecognized." Pet'r Br. at 23. Indeed, the health data that is gathered in these assessments could provide the medical basis for SSI applications. Additionally, EPSDT requires that a covered child receive diagnostic evaluations and any necessary health care, treatment or additional services, as described at 42 U.S.C. §1396d(a), to "correct or ameliorate" a physical or mental illness. 42 U.S.C. §§1396a(a), 1396d(r)(5). As the guardian of the child, Washington has the statutory duty to meet the health needs of children in its care. Washington's DSHS agency is charged not only with implementing EPSDT for all eligible children, but also with the duty of ensuring that the children in its care are screened, diagnosed and treated under EPSDT.

b. Washington has a federally mandated duty to identify, assess and treat all disabled children's educational needs under IDEA

Washington also has an affirmative duty under the Individuals with Disabilities Education Act ("IDEA") to

identify, assess, and treat children with disabilities relating to education. 20 U.S.C. §1400 *et seq*. In 1975, Congress enacted IDEA to provide the states with funding to create and develop programs to provide eligible disabled children with a Free Appropriate Public Education ("FAPE"). By submitting an application and accepting federal IDEA funds, the state of Washington made a promise to provide a FAPE to its disabled children in the manner set out in the statute and regulations. 34 C.F.R. § 300.121(a).

IDEA requires local school districts to seek out disabled children. Washington codified this mandate, requiring local districts to conduct affirmative "child find activities" for the purpose of locating, evaluating and identifying students with a suspected disability. Wash. Admin. Code § 392-172-100. A referral of a student suspected of having a disability by a parent, medical personnel, teacher, or any other interested person triggers a full and complete disability evaluation. This mandatory, comprehensive assessment can include an evaluation of health, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. *See* 20 U.S.C. § 1414; Wash. Admin. Code § 392-172-100 *et seq*.

If the child is determined to be eligible for special education and IDEA-related services, the evaluation data is then used to develop the child's individualized education plan. The plan outlines the additional services to which the disabled child is entitled under the statute, serving as the framework for the state of Washington to meet its duty to provide.

Under IDEA and the associated state rules for the provision of special education, Washington has an ongoing duty to identify, evaluate, and provide services to disabled children.

Wash. Admin. Code § 392-172-100. The state's duty to meet the educational needs of disabled children and thereby provide a FAPE to all students, accomplishes many of the same screening and evaluation goals of Washington's SSI applications unit.

3. Washington has other reasons to apply for social security on behalf of foster children

The aforementioned statutes and programs evince foster children's entitlement to assessments, treatment and services without regard to their social security status.

While there is no similar mandatory duty to establish eligibility for SSI or Social Security benefits for youth committed to its care, Washington has compelling reasons to assess need and apply for social security benefits for eligible children quite aside from whether or not the state may use individuals' social security benefits to pay for its foster care program.

For example, *amici* CDF, point out that establishing eligibility "may help make it easier for [a] child to reunify safely with his or her family" and "[r]eceipt of benefits may also help to facilitate adoptions...." *Amici* Br. of CDF at 23. Returning children home or facilitating adoption is a primary and consistent goal of federal foster care legislation. *See* 42 U.S.C. § 670 *et seq*. The Washington legislature has also expressed its commitment to reducing length of stay, recognizing that "the number of children entering out-of-home care is increasing and that a number of children receive long-term foster care protection. Reasonable efforts by the department to shorten out-of-home placement or avoid it altogether should be a major focus of the child welfare

system." Wash. Rev. Code § 74.14C.005(1). Since social security benefits help reunification and adoption placement, applying helps Washington satisfy its broader duties.

Furthermore, establishing eligibility will be in the best interests of a youth with special needs and will contribute to his or her well-being, in terms of placement options and rehabilitation. Reducing the period of time a child is in state care also will reduce outlays of state funds.

B. Washington has Difficulty Meeting the Basic Needs of Foster Children

Washington and its *amici* claim that the ruling below will prevent Washington and other states from becoming representative payees for foster children. Because "*there is no one else to act in that capacity*," petitioners predict that where the state will not serve, eligible children will go without. *Amici* Br. of CDF at 21 (emphasis in original). Absent a representative payee, *amici* CDF contend that many children in foster care won't receive their benefits or the special attention that is now directed to their disabilities need. *See id.* at 22.

Aside from applying for benefits, the most important service Washington might provide to social security recipients in state care is taking special efforts to meet their individual needs. Disabled foster children, especially, have enormous personal needs.

But the evidence indicates that Washington does not use children's social security benefits for this purpose. Indeed, the state's cost recovery program virtually precludes consideration of an individual child's best interests, and is a barrier to

addressing special needs. The court below concluded that any other payee would better suit Washington children's needs*See Keffeler*, 32 P.3d at 275.

The results of Respondents' sampling of 48 individual cases demonstrates that very little financial benefit is conferred on disabled children as a result of DSHS's service as representative payee. *See* Resp't Br. at 9. Additionally, DSHS's procedures provide no easy access to social security benefits for disabled children, foster parents, or social workers. *See* Resp't Br. at 9. The most disturbing evidence of the state's failure to meet Washington's foster children's special needs is the state's inability to meet their *most basic* needs. The National Center for Youth Law, along with local Washington counsel, recently won a sweeping injunction against Washington to remedy the State's failure to provide safe or stable placements or necessary medical care, among other things, to a broad class of children in state care. *See Braam v. State of Wash. Dep't. of Soc. & Health Servs.*, No. 98-2-01570-1 (Whatcom County Super. Ct., May 31, 2001).

C. Washington Policies Put the Individual Entitlements of the State's Neediest Children to Unauthorized Uses

1. Washington compensates itself as representative payee in violation of federal and state policy

Under the Social Security Act, Congress authorized representative payees to use benefits to offset administrative expenses. The set-off, however, is limited to the "lesser of 10 percent of the monthly benefit involved, or $25.00 per month." 42 U.S.C. §§ 405(j)(4)(A)(i)(I)-(II), 1383(a)(2)(D)(i)(I)-(II).

Under Washington law, the Secretary is directed to serve as representative payee for children placed with DSHS "without compensation." Wash. Rev. Code § 74.13.060. In Danny Keffeler's case, the state's willingness to serve as representative payee cost his entire social security grant of approximately $5000. *See* Resp't Br. at 10 n. 12. Based on a sampling of individual cases, his experience is not unusual. Indeed, disabled children in state custody on average received three pennies on the dollar in individual benefits when the state of Washington managed their social security funds. *See* Resp't Br. at 9. Most received no individual benefit at all.

The state takes the position that the benefits were used, not for administrative expenses, but for current maintenance. But, there is no escaping the fact that if the state is prohibited from using benefits for current maintenance, it will cut the representative payee service, not basic foster care. The linkage is crystal clear – social security benefits underwrite representative payee services. Just as clearly, this policy flouts federal and state restrictions on representative payee compensation.

2. Washington's cost recovery policy improperly transforms private entitlements into a public funding stream

Washington is concerned that the decision below will bar Washington from using social security benefits as a federal funding stream for its child welfare program.

> [A] reduction in DSHS's role as representative payee does [mean] that, without the offset, there will be fewer resources for *all* of the children in foster care in Washington.

Amici Br. of CDF at 22.

This is an extraordinary recognition – that the individual property of the neediest foster children may be commandeered for use as a public funding stream. Nothing about the representative payee provision suggests that Congress intended this result. Yet Washington clearly uses its fiduciary position as representative payee to aggregate individual social security benefits into what amounts to a federal funding source. As Respondents point out, each year Washington calculates the amount of social security benefits it expects to take in, and lowers the state's child welfare appropriation in a like amount. *See* Resp't Br. at 8-9.

Absent some clear indication from Congress that personal entitlements may be put to this use, such a confiscatory policy ought not to be sustained. The State cannot justify transferring its financial obligation to provide for all the State's neglected and abused children onto the backs of the neediest few.

CONCLUSION

For the foregoing reasons, *Amici Curiae* Juvenile Law Center and National Center for Youth Law respectfully submit that the decision of the Washington Supreme Court be upheld.

Respectfully submitted,

Marsha L. Levick,
Counsel of Record

MARSHA L. LEVICK
Counsel of Record
KATHERINE TURNER
JENNIFER POKEMPNER
Juvenile Law Center
1315 Walnut Street, 4th Flr.
Philadelphia, PA 19107
(215) 625-0551

PATRICK GARDNER
REBECCA GUDEMAN
Counsel for Amici Curiae
National Center for Youth Law
405 14th Street, 15th Flr.
Oakland, CA 94612
(510) 835-8098

Originally filed October 4, 2002. *Reprinted with permission* on October 18, 2002.

No. 01-1420

IN THE

Supreme Court of the United States

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, *et al.*,

Petitioners,

v.

GUARDIANSHIP ESTATE OF DANNY KEFFELER, by WANDA PIERCE, Guardian, and other persons similarly situated,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF OF AMICI CURIAE: OMAR M. AZZAM, WILLIAM J. BETTENCOURT, KRYSTINA M. BETTENCOURT AND MISTIE NICOLE MABE, AND OTHER PERSONS SIMILARLY SITUATED, IN SUPPORT OF RESPONDENTS

DENNIS B. ATCHLEY
402 North Nevada Street
Oceanside, CA 92054
(760) 400-0263

DOUGLAS W. GRINNELL*
9980 Carroll Canyon Rd, 2nd Fl.
San Diego, CA 92131
(858) 527-0111

PAUL W. LEEHEY
205 West Alvarado
Fallbrook, CA 92028
(760) 723-0711

DONNIE R. COX
402 North Nevada Street
Oceanside, CA 92054
(760) 400-0263

* *Counsel of Record*

Counsel for Amici Curiae

176806

BEST AVAILABLE COPY

TABLE OF CONTENTS

	Page
TABLE OF CITED AUTHORITIES	ii
OPINION BELOW	1
INTEREST OF THE *AMICI CURIAE*	2
SUMMARY OF ARGUMENT	3
ARGUMENT	4
I THE STATE ACTS AS A CREDITOR OF DEPENDANT CHILDREN IN REIMBURSING ITSELF FOR THE COSTS INCURRED IN THEIR CARE	4
II CONFISCATING A FOSTER CHILD'S BENEFITS IS "OTHER LEGAL PROCESS" WITHIN THE MEANING OF § 407(a)	8
III THERE IS NO IMPLIED EXCEPTION TO § 407(a) FOR THE ATTACHMENT OF SOCIAL SECURITY BENEFITS	11
IV CONFISCATING A DEPENDANT CHILD'S SOCIAL SECURITY BENEFITS RESULTS IN INDIGENCY	13
V CALIFORNIA DOES NOT USE BENEFITS WITHHELD FROM CHILDREN FOR THEIR CURRENT MAINTENANCE	15
CONCLUSION	20

TABLE OF CITED AUTHORITIES

Cases	Page
Bennett v. Arkansas, (1988) 485 U.S. 395	8, 11
Califano v. Jobst, (1977) 434 U.S. 47	14
C.G.A. v. State, (1992) 824 P.2d 1364	13
Crawford v. Gould, 56 F.3d 1162 (9th Cir. 1995)	8, 9, 10
Fetterusso v. New York, 898 F.2d 322 (2d Cir. 1990)	9
Guardianship Estate of Danny Keffeler v. Washington State Department of Social and Health Services, et. al., 145 Wash. 2d 1, 32 P.3d 267	*passim*
King v. Schafer, 940 F.2d 1182 (8th Cir. 1991)	6
Mabe v. County of San Bernardino, 237 F.3d 1101 (9th Cir. 2000)	14
Mason v. Sybinski, 280 F.3d 788 (7th Cir. 2002)	6
Philpott v. Essex County Welfare Bd., (1973) 409 U.S. 413	4

Cited Authorities

	Page
United States Constitution:	
Fourth Amendment	14
Statutes and Codes	
42 U.S.C. § 401 *et seq.*	13
42 U.S.C. § 405(j)	3, 6, 16, 19
42 U.S.C. § 407(a)	*passim*
42 U.S.C. § 654	18
42 U.S.C. § 1381 *et seq.*	13, 15
42 U.S.C. § 1383(d)(1)	8
42 U.S.C. § 1983	3
Arkansas Stat. Ann. § 1702(b) (Supp. 1985)	11
Arkansas Stat. Ann. § 1704(a) (Supp. 1985)	11
California Government Code § 27757(c)	6, 8, 11
California Welfare & Institutions Code § 300 *et seq.*	14
RCW 74.13.060	8, 11

Cited Authorities

	Page
20 C.F.R. § 404.2021(b)	6, 7
20 C.F.R. § 404.2035(a)	6
20 C.F.R. § 404.2040(a)	16
20 C.F.R. § 404.2045(a)	13, 16
20 C.F.R. § 414.640(a)	16
20 C.F.R. § 416.110	15
20 C.F.R. § 416.621(b)	7
20 C.F.R. § 416.645(a)	13
Rule	
Rules of the Supreme Court of the United States 37.3	2

No. 01-1420

IN THE

Supreme Court of the United States

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, *et al.*,

Petitioners,

v.

GUARDIANSHIP ESTATE OF DANNY KEFFELER, by WANDA PIERCE, Guardian, and other persons similarly situated,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF OF AMICI CURIAE: OMAR M. AZZAM, WILLIAM J. BETTENCOURT, KRYSTINA M. BETTENCOURT AND MISTIE NICOLE MABE, AND OTHER PERSONS SIMILARLY SITUATED, IN SUPPORT OF RESPONDENTS

OPINION BELOW

In *Guardianship Estate of Danny Keffeler v. Washington State Department of Social and Health Services, et al.*, 145 Wash. 2d 1, 32 P.3d 267, the Washington Supreme Court

held that the State of Washington violated the anti-alienation provision of 42 U.S.C. § 407(a) by confiscating dependant children's Social Security benefits for the purpose of reimbursing itself the costs of providing foster care to children. According to the Washington Supreme Court, the State of Washington acts as a creditor of dependant children when reimbursing itself from said children's Title II or Title XVI Social Security benefits for foster care and other related services. The decision prevents State agencies from confiscating needy children's benefits to pay for services the agencies are legally obligated to provide.

The reasoning of the *Keffeler* decision is correct, and the decision should be affirmed.

INTEREST OF THE *AMICI CURIAE*

Amici children are class representatives of classes of dependant children who, since 1976, have had their Social Security benefits wrongfully converted by the California Counties of Los Angeles, Santa Clara, and San Bernardino in violation of 42 U.S.C. § 407(a). Each action was filed in early 2002 and was removed to the Federal District Court and stayed when *certiorari* was granted herein. Neither the size of the classes nor the extent of the Social Security benefits converted during this period is known as of this date, as no discovery has been conducted.[1]

---

1. *Amici* herein have obtained consent of all parties to join in this *amicus* brief, pursuant to Rules of the Supreme Court of the United States, Rule 37.3. Counsel for a party did not author this brief in whole or in part. No person or entity, other than the *amici curiae* and their counsel, has made a monetary contribution to the preparation and submission of this brief.

The California Counties *amici* brief asserts that children *amici* herein seek "repayment of millions of dollars of public funds expended for care of dependant children." (Brief of California Counties *amici*, at 4). In truth, children *amici* herein seek repayment of *the children's monies* taken from them by the California Counties in violation of 42 U.S.C. § 407(a). Further, while it is indeed true that class representatives seek damages under 42 U.S.C. § 1983, no particular county employees have been sued individually, and thus no individual faces liability for punitive damages.

Each of the thousands of children who are members of the subject classes has a strong interest in this Court's interpretation of the applicable provisions of the Social Security Act, and the prevention of further confiscation of their Social Security benefits. *Amici* children herein urge the Court to uphold the Washington Supreme Court's interpretation of the anti-alienation provision of 42 U.S.C. § 407(a).

SUMMARY OF ARGUMENT

While it is permissible for state agencies to act as representative payees of dependant children under section 405(j) of the Social Security Act, section 407(a) of the same Act prohibits such agencies, (acting as each child's fiduciary), from confiscating the children's Social Security benefits to reimburse themselves the cost of foster care services.

ARGUMENT

I

THE STATE ACTS AS A CREDITOR OF DEPENDANT CHILDREN IN REIMBURSING ITSELF FOR THE COSTS INCURRED IN THEIR CARE

In *Philpott v. Essex County Welfare Bd.* (1973) 409 U.S. 413, the United States Supreme Court described the broad protection that 42 U.S.C. § 407(a) affords Social Security benefits. *Philpott* declared that § 407(a) barred the State of New Jersey's attempt to reach Social Security disability benefits in order to reimburse the state for public assistance expenditures made on behalf of the petitioners. State welfare recipients were required to execute an agreement, as a condition to receiving welfare benefits, to reimburse the county welfare board with any funds that came into their possession.

When Philpott refused to turn over his SSA benefits to the board, the board sued to enforce the agreement. This Court held that § 407(a) prohibited New Jersey from reaching the petitioner's Social Security benefits, explaining, "We see no reason why a State, performing its statutory duty to take care of the needy, should be in a preferred position as compared with any other creditor." *Philpott*, 409 U.S. at 416.

In *Keffeler*, after reviewing the reimbursement practices of the Washington Department of Social & Health Services ("DSHS"), the Washington Supreme Court found that DSHS' practices "demonstrated a creditor relationship, a relationship involving creditor-type acts, vis-à-vis foster children and their SSA benefits". 145 Wash. 2d at p.18. The *Keffeler* Court

found that DSHS' status as representative payee did not change the analysis of its ability to use the Social Security benefits it received as reimbursement. The reason that the DSHS scheme rendered it a creditor can be found in Washington's statutes:

> RCW74.13.060 (and its implementing legislation, (former WAC 388-70-069) requires it to reimburse itself for the public assistance it has meted out to foster children from money, including SSA entitlements, that come into the children's possession. If the legislature did not hold the costs of foster care were somehow "owed" back to the taxpayers, it would not claim the right of DSHS to reimburse itself on the taxpayer's behalf.

145 Wash. 2d at pp.23, 25.

Thus, the key question in *Keffeler* is whether a state may comply with its fiduciary duty as representative payee to administer Social Security benefits in a *child's* best interests while simultaneously acting under state laws and regulations that require that it transfer to the state treasury all Social Security benefits received on behalf of a child in foster care without regard to the needs of the child. The Washington Supreme Court correctly held that it could not. By billing the children for the myriad costs associated with their foster care, and then applying their SSA and SSI benefits to recoup these costs, the DSHS acts as a creditor.

Even though it serves as representative payee, Washington's DSHS cannot take the children's Social Security monies to repay unspecified foster care costs. As the *Keffeler* Court put it, "if DSHS is allowed under

§ 405(j) to become a representative payee for the foster children, that fact does not establish the legality of taking the child's money." 145 Wash.2d at pp.22-23.

Like Washington law, California law requires that counties providing foster care seek reimbursement of the cost of such care from the children themselves. California Government Code § 27757(c) reads in pertinent part as follows:

> In any case where a county has expended money for the support and maintenance of any ward, dependant child or other minor person . . . if the ward, dependant child or other minor person or parent, guardian or other person liable for the support of the ward, dependant child or other minor person acquires property, money, or estate subsequent to the date the juvenile court assumed jurisdiction over the ward, dependant child or minor person, . . . the county shall have a claim for said reimbursement against the ward, dependant child or other minor person or parent, guardian or other person responsible for such support and maintenance. The county financial officer or the local child support agency shall enforce such claim, as the case may be.

Just as DSHS in Washington acted as a creditor in impermissibly recouping its foster care costs from dependant children's Social Security benefits, the *amici* California Counties act as creditors of dependant children under California Government Code § 27757(c). Using the Social Security benefits for the care and maintenance of the beneficiary, as required under 20 C.F.R. § 404.2035(a), would

indeed be in the best interests of the *beneficiary*. But that is significantly different from using such benefits to reimburse *the Counties* for the unspecified overall administrative costs generally incurred by the Counties.

Appellants and California Counties *amici* rely on *King v. Shafer* 940 F.2d 1182 (8th Cir. 1991) and *Mason v. Sybinski* 280 F.3d 788 (7th Cir.2002) for the proposition that use of Social Security benefits by government agencies to reimburse foster care costs does not violate the anti-alienation provision of Section 407(a). The *King* court, however, held only that an agency does not employ "other legal process" when it appoints itself as representative payee. The *King* court did not address or consider the specific issue of a representative payee acting in the capacity of creditor. Likewise, in *Mason*, the issue addressed and decided was whether it was "other legal process" to use Social Security benefits. Neither *King* nor *Mason* even addressed the creditor-debtor issue decided by the Washington Supreme Court in *Keffeler*.

It is true that state agencies may be appointed as representative payees under the Social Security Act. Such appointments are appropriate only if no other suitable individual is identified to serve in that capacity. (20 C.F.R. §§ 404.2021(b), 416.621(b)). However, the capacity of a state agency to serve as a child's representative payee does not give that agency *carte blanche* authority to confiscate all of that child's Social Security benefits without scrupulous consideration of that child's individual needs.

II

CONFISCATING A FOSTER CHILD'S BENEFITS IS "OTHER LEGAL PROCESS" WITHIN THE MEANING OF § 407(a)

Under the Social Security Act, a beneficiary's creditors are prohibited from attaching or encumbering Social Security benefits. 42 U.S.C. § 407(a) states:

> The right of any person to any future payment under this Subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. 42 U.S.C. §§ 407(a), 1383(d)(1).

When a governmental agency takes a foster child's benefits as a "claim for reimbursement" pursuant to a statute such as California Government Code § 27757(c), (or Washington's RCW 74.13.060), such a taking is clearly "other legal process" and prohibited by § 407(a). In *Crawford v. Gould*, 56 F.3d 1162 (9th Cir. 1995), California's Health & Welfare Agency withdrew psychiatric patients' Social Security benefits without their consent to reimburse itself for the cost of the patients' care. The Ninth Circuit Court of Appeals noted that if California's procedure conflicts with the anti-alienation provision of § 407(a), the Supremacy Clause of the United States Constitution requires that the state procedure be set aside, citing *Bennett v. Arkansas*, (1988) 485 U.S. 395.

In holding that this procedure amounted to "other legal process", the Court noted:

> Our conclusion, that "other legal process" includes the procedure that California uses to deduct Social Security benefits, is consistent with the purpose of § 407. The nonassignment provision was not designed to preclude use of only the judicial process to obtain Social Security benefits. Rather, § 407(a) is designed "to protect Social Security beneficiaries and their dependants from the claims of creditors. . . . The cramped reading of § 407 California urges would enable the state to obtain Social Security benefits through procedures that afford less protection than judicial process affords.

Crawford, supra, 1166 (citations omitted). The *Crawford* Court concluded that the clause "other legal process" is not limited to court-initiated enforcement proceedings:

> Congress intended the words 'or other legal process' to embrace not only the use of formal legal machinery but also resort to express or implied threats and sanctions. . . . Thus § 407(a) is violated when the state places itself in the position of a preferred creditor or coerces payment from protected beneficiaries.

Id. at 1167, citing *Fetterusso v. New York*, 898 F.2d 322, at 328. (2d Cir. 1990)

The essence of the Ninth Circuit's holding in *Crawford* was aptly summarized by Justice Trott in his concurring opinion:

> If the patient-debtor were not under the absolute control of the state, a process such as execution, levy, attachment, garnishment, or some "other legal process," would be needed to get at his funds. But, because in this instance the state controls both the patient and his money, the state need not resort to such devices, as this case demonstrates. Under these circumstances, permitting the state to say, as it does, that taking money from people who don't want to give it up is not "legal process" sounds too much like a construction out of Bleak House, or the parchment stuff of Dick the Butcher in Henry the Sixth, Part 2. The end ultimately may be palatable, but the state's recommended manner of achieving it is not.

Id at 1169.

Amici children are, like the mental patients in *Crawford*, "under the absolute control of the state" which controls both the children and their money. Can it realistically be said that California's (or Washington's) practice, done without any resort to judicial intervention, is not "other legal process"? Clearly it is.

III

THERE IS NO IMPLIED EXCEPTION TO § 407(a) FOR THE ATTACHMENT OF SOCIAL SECURITY BENEFITS

The Washington statute (RCW 74.13.060), and California Government Code § 27757(c), authorize the social service agencies of both states to take custody of a foster child's Social Security benefits. Each statute subjects a child's Social Security benefits to a legal administrative process akin to legal judicial process, which is forbidden by § 407(a). Appellants urge that their confiscation of Social Security benefits is an exception to § 407(a).

However, this Court has already held there are no such exceptions. In *Bennett v. Arkansas*, (1988) 485 U.S. 395, an Arkansas statute (Arkansas Stat. Ann. § 46-1704(a) (Supp. 1985)) provided that the estate of a person incarcerated in a penal facility of the Arkansas Department of Corrections "may be subjected to the payment to the State of the expenses paid and to be paid by it on behalf of said person as a prisoner." Arkansas Stat. Ann § 46-1702(b) (Supp. 1985) defined "estate" as:

> . . . any properties, tangible or intangible, real or personal, belonging to or due an inmate confined to an institution of the Department of Correction, including income or payments to such inmate from Social Security, previously earned salary or wages, bonuses, annuities, pensions or retirement benefits, or from any source whatsoever.

485 U.S. 395, 396 n.1.

The Arkansas Supreme Court, in rejecting the prisoners' challenge that the law violated § 407(a), (290 Ark. 47, 716 S.W. 2d 755 (1986) found that there was no conflict between the federal and state statutes because "the federal statutes contain an implied exception to the exemption from legal process when the State provides for the care and maintenance of a beneficiary of social security or veterans' funds." *Id.* at p.49.

In reversing the Arkansas Supreme Court, this Court found a clear inconsistency between the Arkansas statute and 42 U.S.C. § 407(a).

> Section 407(a) unambiguously rules out any attempt to attach Social Security benefits. The Arkansas Statute just as unambiguously allows the State to attach those benefits. As we see it, this amounts to a 'conflict' under the Supremacy Clause-a conflict that the State cannot win.

485 U.S. 395, 397.

This Court has determined that § 407(a) is unambiguous and contains no implied exception for legal process that would allow for attachment of otherwise exempted federal benefits "simply because the State has provided the recipient with 'care and maintenance'." 485 U.S. at p.397. There exists no compelling reason why the result should be any different for foster children. As the trial judge noted in *Keffeler*, "[T]here is no legal basis for giving foster children less protection for their social security benefits than adult welfare recipients, state prisoners, or involuntarily committed mental patients receive." *Estate of Keffeler, supra*, 145 Wash. 2d 1 at 22.

Appellants point to *C.G.A. v. State*, (1992) 824 P.2d 1364 as authority for the proposition that the State may use a minor's Social Security benefits to pay for the cost of his incarceration at juvenile hall. However, the *C.G.A.* court only said that the state may apply to become a representative payee. *C.G.A.*, 824 P.2d at 1366. As the Washington Supreme Court noted in *Keffeler*, "The court did not hold the state could reimburse itself but deferred that determination to the Social Security agency under the doctrine of primary jurisdiction. Id at p.1370." *C.G.A.* stands for no more than the uncontested proposition DSHS may apply to become a representative payee. 145 Wash. 2d 1, at 22.

IV

CONFISCATING A DEPENDANT CHILD'S SOCIAL SECURITY BENEFITS RESULTS IN INDIGENCY

Under federal law, if the monthly Social Security benefit due a dependant child exceeds the amount needed for his or her current maintenance, Social Security regulations direct the representative payee to conserve or invest the excess funds and hold them in trust for the child. (20 C.F.R. § 404.2045(a), 416.645(a)). A child receiving Supplemental Security income under Title XVI of the Act (42 U.S.C. § 1381 *et seq.*) may accumulate no more than $2,000 in his or her account. (20 C.F.R. §§ 404.2045(a), 416.645(a)). However, a child receiving Old Age and Survivors Disability Insurance Benefits under Title II of the Act, (42 U.S.C. § 401 *et seq.*) is not limited in the amount that may accrue in his or her account.

SSA (42 U.S.C. § 401 *et seq.*) is an insurance program. A child receives benefits when a parent dies or is disabled

until the child is eighteen, without regard to the child's resources. Congress intended these benefits "to provide persons dependant on the wage earner with protection against the economic hardship occasioned by loss of the wage earner's support." *Califano v. Jobst.*, (1977) 434 U.S. 47, 50.

SSA benefits end when the child reaches age 18. Under California Law, Juvenile Court dependency jurisdiction over a child is terminated when the child reaches the age of 18 (California W&I Code § 300 *et seq.*). Under the current situation, due to the diversion of their Social Security benefits prior to their aging out of the system, dependant children under both systems are left indigent when they reach 18.

As an example, Mistie Mabe, the class representative in the pending class action against the County of San Bernardino (Case No. ED CV 02-208 RT [SGLx]), was receiving benefits of $815 per month due to the death of her father when she was 10. At that time, her mother was using approximately $600 for her use and benefit and depositing approximately $215 a month into a savings account for her benefit as required by the Social Security Act. Mistie was removed from her mother's home in June of 1995, and declared a dependant of the Juvenile Court in August. Her warrantless removal was later found by the Ninth Circuit Court of Appeals to be in violation of the 4th Amendment, as she was not in "imminent danger of serious bodily injury" when removed.[2] She remained in the foster care system for 44 months.

When she turned 18 in March of 1999, Ms. Mabe was simultaneously aged out of both the foster care system and

2. *Mabe v. County of San Bernardino*, 237 F.3d 1101 (9th Cir. 2000).

her entitlement to survivor's benefits under Title II of the Social Security Act. Although her mother (her representative payee before her detention in foster care), had accumulated Social Security funds in her savings account prior to her detention in foster care, the County of San Bernardino failed to do so, so that at age 18 she was left with *no accumulated savings whatsoever for the time the County was her representative payee.*

No accounting was ever provided Ms. Mabe, who was simply told there were no funds accumulated on her behalf. At the exact time in her life when her representative payee was required to transfer any accumulated funds to her that would allow her to attend college, marry, or start a business, she was left penniless. Thus, the confiscation of her benefits caused the very problem (indigency) that Title II of the Social Security Act was designed to prevent. There exists no justification for the Counties of California to balance their books on the backs of dependant children that temporarily come under their care.

V

CALIFORNIA DOES NOT USE BENEFITS WITHHELD FROM CHILDREN FOR THEIR CURRENT MAINTENANCE

SSI (42 U.S.C. § 1381 *et seq.*) is a welfare benefit, based on either the child's or a parent's disability. Benefits are provided "to assure a minimum level of income for persons who are ". . . blind or disabled and who do not have sufficient income and resources to maintain a standard of living at the established Federal income level." 20 C.F.R. § 416.110. The Social Security Administration regulations authorize a

representative payee to pay for the beneficiary's "current maintenance", including the costs of "food, shelter, clothing, medical care and personal comfort items." 20 C.F.R. §§ 404.2040(a), 414.640(a).

When the monthly Social Security benefits exceed the amount needed for current maintenance, the regulations direct the representative payee to *conserve* or *invest* these funds and hold them in trust for the child. 20 C.F.R. §§ 404.2045(a), 416.645(a). This is a part of the overriding requirement that Social Security benefits be used in the *beneficiaries'* "best interest". 42 U.S.C. § 405(j).

Amici William J. Bettencourt and Krystina M. Bettencourt are class representatives in the class action now pending against the County of Santa Clara in the Northern District of the United States District Court in California, case no. C 02-01712 (JF). Each, along with two siblings, began collecting SSI benefits due to the disability of their mother in 1993. All four children were removed from their mother's custody on August 27, 1998, and the County of Santa Clara thereafter became their representative payee, and remains so at present. In November of 2001, William was returned to his mother's custody, and Krystina was returned in February of 2002. One sibling remains in foster care, and, after his mother's parental rights were terminated, another sibling was adopted in 2000.

Despite the fact that three of the children are no longer in its care, the County of Santa Clara continues to withhold their current Social Security monthly benefits to reimburse itself for foster care benefits paid *as long ago as 2000*. It cannot be rationally argued that William, Krystina or their adopted brother's "current maintenance" entitles the County

of Santa Clara to withhold their benefits – or that such action is in their best interests – *as none of them is currently receiving foster care benefits*. Their mother, however, remains disabled, and in need of the children's Social Security benefits to meet their current needs.

The plight of these children demonstrates that the California Counties are taking children's social security benefits for the purpose of revenue recovery, and not for providing for the children's "current maintenance." It was precisely this type of conduct which the Washington Supreme court struck down in *Keffeler*, as the Court held that using the Social Security benefits to reimburse the State for its public assistance expenditures is not, in all cases or even some, "in the best interests of the beneficiary":

> ". . . especially when that payment to the State cannot be legally compelled, and, moreover, could be used or conserved for other special needs of the child."

145 Wash.2d at p.24.

It defies logic to contend that depriving William and Krystina Bettencourt of their *current* benefits to repay the County of Santa Clara for the cost of their *past* foster care is providing for the children's "current maintenance" within the meaning of the Social Security regulations. Yet that is the intended effect of California Counties' confiscatory policy.

The Bettencourt children would be better off with any representative payee other than the County of Santa Clara

because the County cannot compel a private representative payee to repay its foster care expenditures. As the *Keffeler* Court held:

> Simply put, if DSHS is appointed representative payee for a foster child it will confiscate the child's SSI money to benefit the state. However, if *anyone else* is appointed, the state will bear the cost of foster care, and the child's SSI will be available to benefit the child in addition to the state-funded foster care program.

145 Wash.2d at p.16.

In the Bettencourt case, although the children's mother cannot be compelled to reimburse the State for the children's past foster care expenses, the County of Santa Clara continues to confiscate the children's benefits. This deplorable situation clearly illustrates how the actions of California's *Amici* Counties are not in the best interests of the children, are those of a predatory creditor, and violate the anti-alienation provision of 42 U.S. C. § 407(a).

Further evidence that California Counties are not using the children's funds to provide current maintenance is the fact that for many children, these very expenses have already been recovered, in part, from federal funds or the children's parents. As the brief of California Counties *amici* admits, the federal government pays at least 50 percent of foster care. (Brief of California Counties *amici* at 6) And the Social Security Act itself requires states to seek financial support from the parents of children in foster care in order to qualify for federal child welfare funding. (42 U.S.C. § 654) Thus,

California Counties are likely to recover their costs twice when they repay foster care expenditures from a child's subsidiary account already recovered from these sources.

The use of the children's Social Security benefits to pay overall program administrative costs, past due expenses, and for costs and services already paid for by federal funds or child support payments violates § 405(j)'s "use and benefit" requirement and serves no interest, much less the best interest, of the child.

CONCLUSION

The *Keffeler* court correctly concluded that the actions of DSHS in assuming the position of a creditor to foster children in its care violated the "broad bar" of § 407(a) of the Social Security Act. A public agency cannot simultaneously wear the hats of creditor and representative payee. No harm will come to state agencies if *Keffeler* is affirmed. However, there will be immense benefit to the children upon whom Congress conferred these precious Social Security entitlements. *Amici* children respectfully request that the Court affirm the decision of the Washington Supreme Court and thereby protect the interests of individual children in Washington, California and throughout the Country.

Respectfully submitted,

DENNIS B. ATCHLEY
402 North Nevada Street
Oceanside, CA 92054
(760) 400-0263

DOUGLAS W. GRINNELL*
9980 Carroll Canyon Rd, 2nd Fl.
San Diego, CA 92131
(858) 527-0111

PAUL W. LEEHEY
205 West Alvarado
Fallbrook, CA 92028
(760) 723-0711

DONNIE R. COX
402 North Nevada Street
Oceanside, CA 92054
(760) 400-0263

* *Counsel of Record*

Counsel for Amici Curiae

Supreme Court, U.S.
FILED
OCT 4 2002
CLERK

No. 01-1420

IN THE
SUPREME COURT OF THE UNITED STATES

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, ET AL.,

Petitioners,

v.

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, GUARDIAN, AND OTHER PERSONS SIMILARLY SITUATED,

Respondents.

On Writ of Certiorari To The Supreme Court of Washington

BRIEF *AMICUS CURIAE* OF AARP IN SUPPORT OF RESPONDENTS

ROCHELLE BOBROFF*
AARP FOUNDATION LITIGATION

MICHAEL SCHUSTER
AARP
601 E Street, N.W.
Washington, DC 20049
(202) 434-2060

Counsel for *Amicus Curiae* AARP

*Counsel of Record

BEST AVAILABLE COPY

TABLE OF CONTENTS

Page

INTEREST OF *AMICUS CURIAE* 1

SUMMARY OF ARGUMENT 3

ARGUMENT 3

THE TERM "OTHER LEGAL PROCESS" ENCOMPASSES STATE LAWS AND ADMINISTRATIVE COLLECTION PROCEDURES 3

CONCLUSION 7

TABLE OF AUTHORITIES

CASES

Bowen v. City of New York, 476 U.S. 467 (1986) 4

Heckler v. Day, 467 U.S. 104 (1984) 4

Keffeler v. State of Washington Department of Social & Health Services, 145 Wn.2d 1, 32 P.3d 267 (Wash. 2000) 3

Miller v. Youakim, 440 U.S. 125 (1979) 5

United States v. Silk, 331 U.S. 704 (1947) 4

STATUTES

42 U.S.C. §405(j) 2

42 U.S.C. § 407(a) . . . . . 2, *passim*

Social Security Act of 1935, Pub. L. No. 74-271, 49 Stat. 624 5

MISCELLANEOUS

H.R. Rep. No. 92-231, 92nd Cong., 2nd Sess. (1972), reprinted in (1972) U.S.Code.Cong. & Ad.News 6

H.R. Rep. No. 615, 74th Cong., 1st Sess. (1935) 5

Social Security Bulletin, http://www.ssa.gov/statistics/Supplement/2001/supp01.pdf 2

No. 01-1420

IN THE

Supreme Court of the United States

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, ET AL.,

Petitioners,

v.

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, GUARDIAN, AND OTHER PERSONS SIMILARLY SITUATED,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

BRIEF *AMICUS CURIAE* OF AARP IN SUPPORT OF RESPONDENTS

INTEREST OF AMICUS CURIAE[1/]

AARP is a nonprofit membership organization of more than 35 million persons age fifty and older dedicated to addressing the needs and interests of older Americans. AARP

[1/] This brief has been authored in its entirety by undersigned counsel for the *amicus*. No person or entity, other than the named *amicus* and their counsel, made any monetary contribution to the preparation or submission of this brief. Letters of consent from both parties have been filed separately with the Clerk of the Court.

submits this amicus brief to highlight for the Court the importance to older persons of the anti-alienation and representative payee provisions of the Social Security Act at issue in this case. 42 U.S.C. § 407(a) (2002) (anti-alienation provision); 42 U.S.C. § 405(j) (2002) (representative payee provision).

Children in foster care are less than 1% of the total population receiving Social Security and Supplemental Security Income ("SSI") benefits. In December 2000, there were over 45 million beneficiaries of Old-Age, Survivors, and Disability Insurance ("Social Security benefits"). The vast majority of Social Security beneficiaries are older persons. Indeed, some Social Security benefits, such as retirement benefits, are provided only to persons over the age of 62. In December 2000, children under the age of 18 constituted approximately 7% of all Social Security beneficiaries. Less than 1% of the total beneficiaries were children under the age of 18 who were not in the custody of the parent payee. Social Security Bulletin, Annual Statistical Supplement, at 21, 246 (2001),available at http://www.ssa.gov/statistics/Supplement/2001/supp01.pdf. Similarly, in December 2000, children under 18 comprised 12.7% of SSI recipients. Less than 1% of SSI beneficiaries were children who did not live in their own household. *Id.* at 290.

Moreover, many individuals utilizing a representative payee are older Americans, not children. In December 2000, over 1.7 million adults had their Social Security benefits administered by representative payees, including 420,860 retired workers over the age of 65. Approximately 1.38 million adults received SSI benefits through a representative payee, with 151,789 of those adults over the age of 65. Social Security Bulletin, *supra,* at 246, 291. While almost all children receiving benefits have a representative payee, the majority of these children are not foster care children. Approximately 90% of the children receiving Social Security benefits are in the custody of their parents, and approximately 95% of the children receiving SSI benefits live in their own household. *Id.*

Millions of older Americans could be affected by a decision of the Court interpreting the requirements of the anti-alienation and representative payee provisions of the Social Security Act. AARP submits this amicus brief to highlight the importance to older persons of the Court continuing to interpret these provisions in a manner that protects beneficiaries from creditors.

SUMMARY OF ARGUMENT

The Court has frequently noted that the Social Security Act is intended to be a remedial statute and should be interpreted to be unusually protective of beneficiaries. The legislative history of the anti-alienation provision provides further support for a broad construction of the statute, emphasizing the importance of protecting benefits from debts in order to ensure the basic necessities of life for beneficiaries. The decision below properly interpreted the Social Security Act's anti-alienation and representative payee provisions to bar the state from seizing the benefits of foster children to pay for general state administrative expenditures and debts.

ARGUMENT

THE TERM "OTHER LEGAL PROCESS" ENCOMPASSES STATE LAWS AND ADMINISTRATIVE COLLECTION PROCEDURES

The Supreme Court of Washington held that the transfer of the Social Security and SSI benefits of foster care children to the state treasury violated the Social Security Act's alienation provision. *Keffeler v. State of Washington Department of Social & Health Services,* 145 Wn.2d 1, 25, 32 P.3d 267, 278 (Wash. 2000). The court ruled that the state's laws and administrative procedures fell within the ambit of the term "other legal process" in 42 U.S.C. § 407(a). *Id.*

Petitioners argue that the term "other legal process" should be narrowly construed to exclude any and all actions of a representative payee. Brief for the Petitioners, *Keffeler* (No.

01-1420). The Commissioner of the Social Security Administration, filing an amicus brief in support of Petitioner, argues that the term should be narrowly construed to exclude any and all processes that occur outside the courtroom, constricting the term to judicial procedures. Brief for *Amicus Curiae* United States of America, *Keffeler* (No. 01-1420).

AARP urges the Court to reject those narrow constructions. The phrase "other legal process" is a broad term, which surely covers the system of laws and procedures by which the state seizes the private property of its citizens and transfers it to the state budget.

The Court has explained that the Social Security Act is intended to be a protective and remedial statute, and therefore, is to be liberally construed. In *United States v. Silk*, 331 U.S. 704, 710, 712 (1947), a case involving tax provisions of the Social Security Act, the Court stated:

> The Social Security Act of 1935 was the result of long consideration by the President and Congress of the evil of the burdens that rest upon large numbers of our people because of the insecurities of modern life. ... It was enacted in an effort to coordinate the forces of government and industry for solving the problems.
>
> * * * * *
>
> As the federal social security legislation is an attack on recognized evils in our national economy, a constricted interpretation of the phrasing by the courts would not comport with its purpose. Such an interpretation would only make for a continuance, to a considerable degree, of the difficulties for which the remedy was devised.

Subsequently, in *Heckler v. Day*, 467 U.S. 104, 106 (1984) and *Bowen v. City of New York*, 476 U.S. 467, 480 (1986), the Court stressed that Congress designed the Social Security Act to be "unusually protective" of claimants.

In *Miller v. Youakim*, 440 U.S. 125 (1979), the Court examined AFDC-FC payments to relative caretakers, focusing on whether family members could be included within the meaning of the term "foster homes." The Court rejected the state's narrow interpretation of that term and held that the Act did not embody "a congressional intent to constrict the broad statutory definition of 'foster family care.'" *Id.* at 136. Thus, the Court recognized that the Social Security Act should be broadly construed, unless there was clear congressional intent to the contrary.

The anti-alienation provision of the Act, 42 U.S.C. § 407(a), was included in the original Social Security Act passed in 1935. Social Security Act of 1935, Pub. L. No. 74-271, 49 Stat. 624. The House Ways and Means Committee held hearings on the law but did not debate or otherwise clarify the meaning of the anti-alienation provision. *See* H.R. Rep. No. 615, 74th Cong., 1st Sess. (1935). As originally passed, the provision applied only to Social Security benefits.

Amending the Social Security Act in 1972, Congress broadened the scope of the anti-alienation provision, making it applicable to SSI as well as Social Security benefits. The House Committee on Ways and Means explained the effect and purpose of the expansion of the anti-alienation provision to SSI, when it reported the bill to the full House of Representatives. The Committee Report states:

> Your committee wishes to emphasize its strong belief that if the benefits which would be provided under this program are to meet the basic needs of the poor, the benefits must be protected from seizure in legal processes against the beneficiary. Therefore, any amounts paid or payable under this program would not be subject to levy, garnishment, or other legal process, except the collection of delinquent federal taxes. Also, entitlement to these benefits would not be transferable or assignable.

H.R. Rep. No. 92-231, 92nd Cong., 2nd Sess. (1972), reprinted in (1972) U.S.Code. Cong. & Ad.News, pp. 4989, 5142.

It is noteworthy that "the collection of delinquent federal taxes" was listed as an exception to "other legal process." Delinquent federal taxes are not only collected through the judicial processes of the courts but also can be collected through the administrative procedures of the federal government. Thus, this legislative history demonstrates that "other legal process" includes not only judicial process but also administrative procedures that collect income or benefits from citizens.

In the instant case, the State of Washington utilized numerous laws and administrative procedures to transfer 97% of the foster children's Social Security and SSI benefits to the state treasury. A-60 ¶ 47. In some cases, parents reimbursed the state for its foster care expenditures, but the state nevertheless took the children's benefits, being reimbursed twice for the foster care payments. A-68 ¶ 77 - A-70 ¶ 84. In other cases, the state utilized children's benefits to repay itself for "debts" of foster care payments made years earlier. A-100-101. In addition, the state appropriated the children's Social Security and SSI benefits to reimburse the state's expenditures for the provision of transportation to foster care caseworkers, *see* JA 404-405, 407-71, which cannot possibly be viewed either as "current maintenance" of the children or as a debt owed by the children.

As set forth in great detail in the Respondent's brief, these transfers of the children's Social Security and SSI benefits to the state treasury were mandated by state statutes and regulations. Clearly, the laws and administrative procedures utilized by the State of Washington to transfer the children's Social Security and SSI benefits to the state treasury constitute "other legal process," which are prohibited by the Social Security Act's anti-alienation provision.

CONCLUSION

For the reasons stated, AARP urges the Court to affirm the decision below.

Respectfully Submitted,

Rochelle Bobroff
AARP Foundation Litigation

Michael Schuster
AARP

601 E Street, NW
Washington, DC 20049
(202) 434-2060

Attorneys for *Amicus* AARP

Dated: October 4, 2002